1879
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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~293.~~ 70

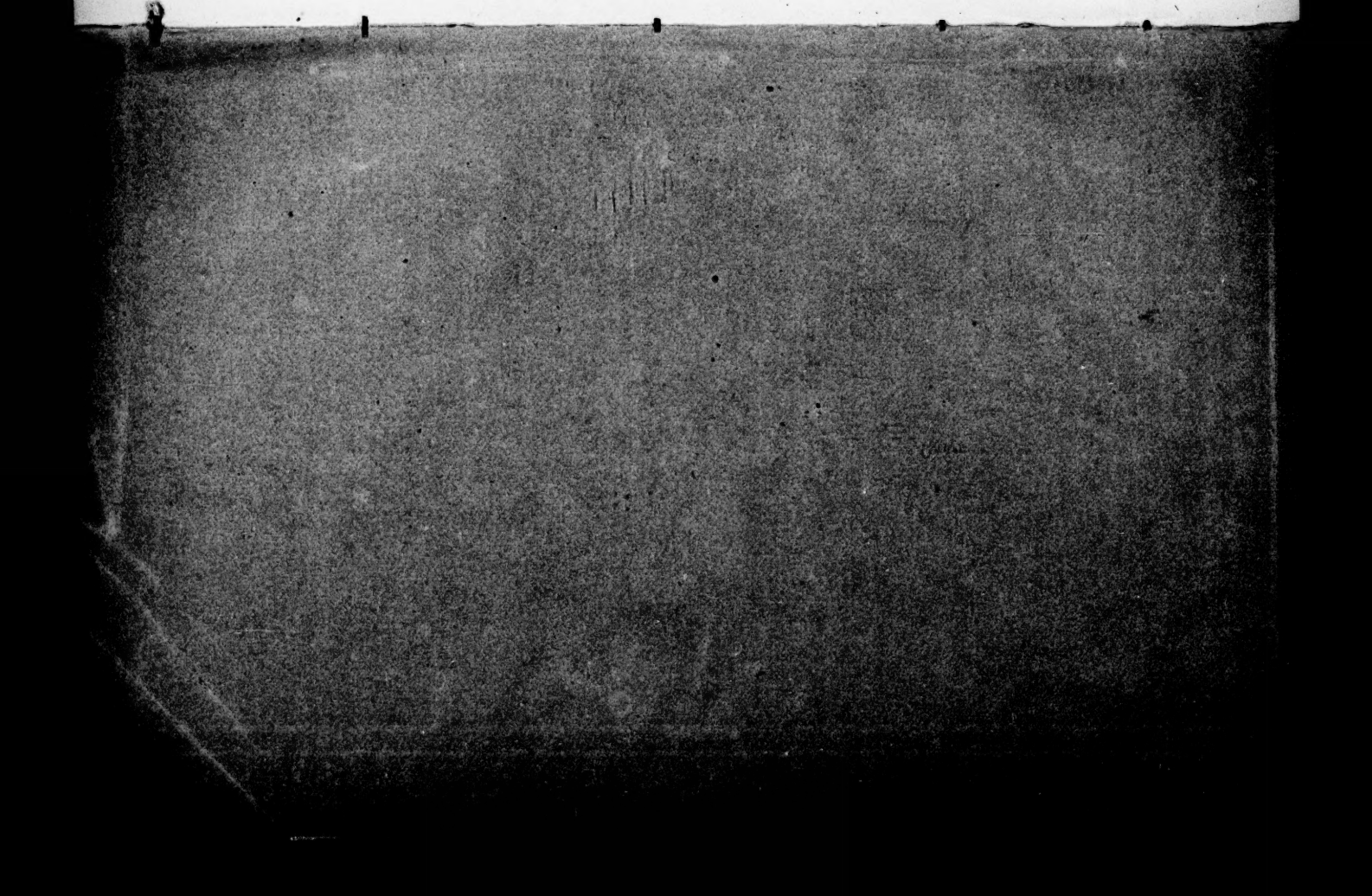
WILLIAM NEWTON MEEKS, PLAINTIFF IN ERROR,

vs.

ROBERT OLPHERTS, MICHAEL COSTELLO, J. J. HUCKS, W. P. GHEEN ET AL.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF CALIFORNIA.

FILED OCTOBER 20, 1876.



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a UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the judges of the circuit court of the United States of the ninth judicial circuit, in and for the district of California, greeting:

Because in the record and proceedings, and also in the rendition of the judgment of a plea which is in the said circuit court, before you, between William Newton Meeks, plaintiff in error, and Robert Olpherts, Michael Costello, J. J. Hucks, William P. Gheen, Edward C. Kirby, Michael Hogan, John Duffey, James Fanning, E. G. Denniston, John Morrison, Mary Hogan, T. W. Goddard, Adam Laux, August Gast, William Robinson, Maria Murray, William Taylor, Anthony McQuade, Catherine McQuade, Henry Schoenan, Charles Brown, Frank Lawlor, Thomas Kain, Neal Bool, Margaret Dunn, William Craine, Henry Chester, J. B. Morrison, Elizabeth McGee, Henry McLaughlin, Bridget B. Mitchell, Patrick Mitchell, James Patterson, Robert Thiele, Otto Jursh, John C. Parks, Mary Devlin, John Hurley, Frank Lawler, M. P. Howe, Thomas O'Brien, Henry T. Cook, the Montgomery Street Real Estate Company, and Maurice Doré, defendants in error, a manifest error hath happened, to the great damage of the said plaintiff in error, as by his complaint appears, and it being fit that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States of America, together with this writ, so that you have the same at the city of Washington, in the District of Columbia, on the second Monday of October next, in the said Supreme Court, to be there and then held, that the record and proceedings aforesaid be inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the law and custom of the United States should be done.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this eighth day of September, in the year of our Lord one thousand eight hundred and seventy-six, and of the Independence of the United States the 101st.

L. S. B. SAWYER,
Clerk U. S. Circuit Court Dist. Cal.

The above writ of error is hereby allowed.

LORENZO SAWYER,
U. S. Circuit Judge 9th Judicial Circuit.

The answer of the judges of the circuit court of the United States for the district of California.

The record and all proceedings of the plaint whereof mention is within made, with all things touching the same, we certify under the seal of our said court to the Supreme Court of the United States, within mentioned, at the day and place within contained, in a certain schedule in this writ annexed, as within we are commanded.

[SEAL.] L. S. B. SAWYER, *Clerk*,
By J. F. O'BEIRNE, *Dep. Clk.*

(Indorsed:) 1083. United States Supreme Court. Wm. N. Meeks, pl'ff in error, vs. Ferdinand Vassault et al., def'ts in error. Writ of error. Filed Sept. 8th, 1876. L. S. B. Sawyer, clerk, by J. F. O'Beirne, dep. cl'k.

REC. 293—1.

b UNITED STATES OF AMERICA, *ss:*

To Robert Olpherts, Michael Costello, J. J. Hucks, William T. Gheen, Edward C. Kirby, Michael Hogan, John Duffey, James Fanning, E. G. Denniston, John Morrison, Mary Hogan, T. W. Goddard, Adam Laux, August Gast, William Robinson, Maria Murray, William Taylor, Anthony McQuade, Catherine McQuade, Henry Schoenan, Charles Brown, Frank Lawlor, Thomas Kain, Neal Bool, Margaret Dunn, William Craine, Henry Chester, J. B. Morrison, Elizabeth McGee, Henry McLaughlin, Bridget B. Mitchell, Patrick Mitchell, James Patterson, Robert Thiele, Otto Jursh, John C. Parks, Mary Devlin, John Hurley, Frank Lawlor, M. P. Howe, Thomas O'Brien, Henry T. Cook, the Montgomery Street Real Estate Company, and Maurice Dore, defendants in error, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States of America, to be held at the city of Washington, in the District of Columbia, on the second Monday of October, A. D. 1876, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the district of California, wherein Robert Olpherts, Michael Costello, J. J. Hucks, William P. Gheen, Edward C. Kirby, Michael Hogan, John Duffey, James Fanning, E. G. Denniston, John Morrison, Mary Hogan, T. W. Goddard, Adam Laux, August Gast, William Robinson, Maria Murray, William Taylor, Anthony McQuade, Catherine McQuade, Henry Schoenan, Charles Brown, Frank Lawlor, Thomas Kain, Neal Bool, Margaret Dunn, William Craine, Henry Chester, J. B. Morrison, Elizabeth McGee, Henry McLaughlin, Bridget B. Mitchell, Patrick Mitchell, James Patterson, Robert Thiele, Otto Jursch, John C. Parks, Mary Devlin, John Hurley, Frank Lawlor, M. P. Howe, Thomas O'Brien, Henry T. Cook, the Montgomery Street Real Estate Company, and Maurice Dore, and you are defendants in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, this eighth day of September, A. D. 1876, and of the Independence of the United States the 101st.

[SEAL.] LORENZO SAWYER,
U. S. Circuit Judge 9th Judicial Circuit.

We admit service of a copy of the within citation this 8th day of September, A. D. 1876.

S. M. WILSON,
WILSON & WILSON,
Attorney for the Montgomery Street Real Estate Company and Maurice Dore, Def'ts in Error.

A. CAMPHERE & C. W. FOX,
Attorneys for remaining Def'ts in Error within named.

(Indorsed:) 1083. United States Supreme Court. Wm. Newton Meeks vs. Ferdinand Vassault & al. Citation. Filed 8th Sept'r, 1876. L. S. B. Sawyer, clerk, by J. F. O'Beirne, dep. cl'k.

1 *Complaint.*

In the circuit court of the United States in and for the district of California.

WILLIAM NEWTON MEEKS, PLAINTIFF,
vs.
FERDINAND VASSAULT, MAURICE DORÉ, JAMES Patterson, John Burk, R. Merriman, Richard Carter, Mrs. John Williams, Christiana Conrad, Hannah Ward, P. J. Gallagher, John Murphy, Thomas O'Brien, Henry Rosenbaum, T. R. Tisdal, Margaret Foley, Catharine McQuade, Eugene McCarthy, Martha Cramp, Bridget Bryden, Michael Reynolds, Henry Shoenan, Bernard O'Farrel, James G. Merrill, William Parker, Charles Lawrence, John Cleary, Henry Simpson, Morris Michael, John Eyre, Patrick Burns, James Flamming, James L. Hicks, Walter B. Higgins, Julian O. Hanlon, George Miller, F. E. Tisdale, John A. Caldwell, Armand E. Whitford, Amanda A. Chitford, J. Hirsch, M. A. Garrity, John
2 Morrison, Samuel Richards, A. P. Bessy, Mrs. S. A. Dall, Mrs. M. Dooly, C. J. Hawley, Angus Leslie, Robert Brown, Spencer C. Brown, Ashbury Harpending, Lyman Dunn, Anthony McQuade, M. P. Howe, John Herrigan, Edward C. Hawley, John Hogan, John Cummings, William Sullivan, Robert Opherts, William Anderson, Richard J. Cardiff, Michael Costello, August Brandt, The "Montgomery Street Real Estate Company," John D. Fry, L. L. Treadwell, John Dunn, M. P. Howe, William Burns, Hannah Coomer, James L. Hicks, Timothy Sheehan, Edward C. Harvey, Walter B. Higgins, Milton S. Latham, John Schultz, Jacob Schmidt, Edward C. Kirby, Andrew McDonald, J. F. Cough, John Doe, Richard Roe, John Doe 1st, Richard Roe 1st, John Doe 2d, Richard Roe 2nd, John Doe 3d, Richard Roe 3rd, John Doe 4th, Richard Roe 4th, John Doe 5th, Richard Roe 5th, John Doe 6th, Richard Roe 6th, John Doe 7th, Richard Roe 7th, John Doe 8th, Richard Roe 8th, John Doe 9th, Richard Roe 9th, John Doe 10th, Richard Roe 10th, defendants.

3 The above-named plaintiff complains of the defendants above named, and alleges and avers:

I. That the plaintiff is a resident and citizen of the State of New York, and defendants are residents and citizens of the State of California.

II. That the defendant, "Montgomery Street Real Estate Company," is a corporation organized and existing under the laws of the State of California, and having its principal place of business in the city and county of San Francisco, in said State; that the real names of the de-

fendants John Doe, Richard Roe, John Doe 1st, Richard Roe 1st, John Doe 2d, Richard Roe 2nd, John Doe 3rd, Richard Roe 3rd, John Doe 4th, Richard Roe 4th, John Doe 5th, Richard Roe 5th, John Doe 6th, Richard Roe 6th, John Doe 7th, Richard Roe 7th, John Doe 8th, Richard Roe 8th, John Doe 9th, Richard Roe 9th, John Doe 10th, and Richard Roe 10th, are unknown to plaintiff, wherefore he designates them by said fictitious names, and prays that when the true names of said
4 defendants shall be discovered they may be inserted herein with proper and apt words to charge them.

III. That heretofore, to wit, on the first day of August, A. D. 1871, the said plaintiff was the owner, and seized in fee and possessed of and entitled to the possession of that certain tract of land, situate in the city and county of San Francisco, State aforesaid, and known as one hundred vara lot number ten (10), as laid down on the official map of said city and county, bounded by Mission street and by one hundred vara lots eight (8), twelve (12), and thirty-two (32), as laid down on said official map.

That thereafter, to wit, on the second day of August, A. D. 1871, and while the said plaintiff was so aforesaid seized and possessed of the said lands and premises, the said defendants wrongfully and unlawfully, and against the will of the plaintiff, entered upon the said lands and premises and ousted and ejected the said plaintiff therefrom, and have ever since detained and withheld and now do still detain and with-
5 hold from the said plaintiff the possession of the said lands and premises and of every part thereof, to his damage in the sum of one hundred thousand dollars.

Wherefore plaintiff prays judgment against said defendants that he recover and be restored to the possession of said herein above described lands and premises, and he also recover of and from said defendants the said sum of one hundred thousand dollars damages, and his cost of action.

WM. H. PATTERSON,
Attorney for Plaintiff.

(Endorsed:) Filed 30th Sept., 1872. L. S. B. Sawyer, clerk, by J. F. O'Beirne, dep. cl'k.

Summons.

6 UNITED STATES OF AMERICA:

In the circuit court of the United States of the ninth circuit, in and for the district of California.

Action brought in the said circuit court and the complaint filed in the office of the clerk of said circuit court, in the city of San Francisco.

WILLIAM NEWTON MEEKS, PLAINTIFF,
vs.
FERDINAND VASSAULT ET AL., DEFENDANTS.

The President of the United States of America, to Ferdinand Vassault, Maurice Dore, James Paterson, John Bark, R. Merriman, Richard Carter, Mrs. John Williams, Christiana Conrad, Hannah Ward, P. J. Gallagher, John Murphy, Thomas O'Brien, Henry Rosenbaum, T. R. Tisdal, Margaret Foley, Catherine McQuade, Eugene McCarthy, Ma r-

tha Cramp, Bridget Bryden, Michael Reynolds, Henry Shoenan,
7 Bernard O'Farrel, James G. Merril, William Parker, Charles Lawrence, John Cleary, Henry Simpson, Morris Michael, John Eyre, Patrick Burns, James Flamming, James L. Hicks, Walter B. Higgins, Julian O'Hanlon, George Miller, F. E. Tisdale, John A. Caldwell, Armand E. Whitford, Amanda A. Chitford, J. Hirsch, M. A. Garrity, John Morrison, Samuel Richards, A. P. Bessy, Mrs. T. A. Dall, Mrs. M. Dooly, C. J. Hawley, Angus Leslie, Robert Brown, Spencer C. Brown, Ashbury Harpending, Lyman Dunn, Anthony McQuade, M. P. Howe, John Herrigan, Edward C. Hawley, John Hogan, John Cummings, William Sullivan, Robert Olpherts, William Anderson, Richard J. Cardiff, Michael Costello, August Brandt, The Montgomery Street Real Estate Company, John D. Fry, L. L. Treadwell, John Dunn, M. P. Howe, William Burns, Hannah Coomes, James L. Hicks, Timothy Sheehan, Edward C. Harvey, Walter B. Higgins, Milton S. Latham, John Schultz, Jacob Schmidt, Edward C. Kirby, Andrew McDonald, J. F. Gough, John Doe, Richard Roe, John Doe 1st, Richard Roe 1st, John Doe 2nd, Richard Roe 2nd, John Doe 3rd, Richard Roe 3rd, John Doe 4th, Richard Roe 4th, John Doe 5th, Richard
8 Roe, 5th, John Doe 6th, Richard Roe 6th, John Doe 7th, Richard Roe 7th, John Doe 8th, Richard Roe 8th, John Doe 9th, Richard Roe 9th, John Doe 10th, Richard Roe 10th, defendants, greeting:

You are hereby required to appear in an action brought against you by the above-named plaintiff, in the circuit court of the United States, ninth circuit, in and for the district of California, and to file your plea, answer, or demurrer, to the complaint filed therein (a copy of which accompanies this summons), in the office of the clerk of said court, in the city and county of San Francisco, within ten days after the service on you of this summons, if served in this county, or, if served out of this county, then within forty days, or judgment by default will be taken against you.

The said action is brought to obtain a judgment against you for the possession of certain lands and premises situate in said district, and particularly described in said complaint, together with the sum of one hundred thousand dollars damages for the unlawful withholding
9 thereof, alleged to have been sustained by the plaintiff, also costs of suit.

And if you fail to appear and plead, answer, or demur, as herein required, judgment by default will be entered against you and each of you.

Witness the honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United of America, this 16th day of January, in the year of our Lord one thousand eight hundred and seventy-three, and of our Independence the ninety-seventh.

[SEAL.] LORENZO S. B. SAWYER, *Clerk*,
By J. F. O'BIERNE, *Deputy Clerk*.

(Endorsed:)

OFFICE OF U. S. MARSHAL,
DISTRICT OF CALIFORNIA.

I hereby certify that I personally served certified copies of the within summons, together with certified copies of the complaint herein mentioned, upon O. Jursch as John Doe No. 1, R. Thiele as John Doe No. 2, John Duffy as John Doe No. 3, J. B. Morrison as John Doe No. 4, W. N. Taylor as John Doe No. 5, E. Morse as John Doe No. 6, Sing Kee as John Doe

10 No. 7, F. Lawlor as John No. 8, E. G. Denniston as John Doe No. 9, W. P. Gheen as John Doe No. 10, Mary Hogan as Mrs. S. A. Dall, Maria Murray as Mrs. John Williams, Miss J. J. Loza as Hannah Ward, Kate Melone as Hannah Coomer, Johanna Wall as Amanda A. Chitford, Mary Develin as Mrs. M. Dooly, Mr. Mitchell as Richard Roe No. 1, Jane Cox as Richard Roe No. 2, Hannah Quinn as Richard Roe No. 3, E. T. Mason as Richard Roe No. 4, Mrs. John Dunn as John Dunn, Michael Hogan as John Hogan, Edward C. Kirby, Anthony McQuade, Catherine McQuade, Thomas O'Brien, Henry Shoenan as Henry Shoenan, and C. J. Braun as August Brandt, on the 16th day of January, A. D. 1873; upon Michael Costello, Maurice Dore, John D. Fry, J. J. Hucks as James L. Hicks, M. P. Howe, Milton S. Latham, the Montgomery Street Real Estate Co., by its secretary, H. G. Walton, Robert Olpherts, James Patterson, L. L. Treadwell, and Ferdinand Vassault, on the 17th day of January, A. D. 1873; and upon N. Bool as Patrick Burns, James Fanning as Robert Brown, Henry McLaughlin as Spencer C. Brown, Thomas Kane as Rich-
11 ard Carter, William Crane, by his agent Charles Quinn (who accepted service) as John Cummings, Elizabeth McGee as Margaret Foley, T. W. Goddard as M. A. Garrity, Adam Loux as E. C. Harvey, John Morrison, and Henry Koch as Henry Rosenbaum, on the 18th day of January, A. D. 1873, all in the city and county of San Francisco.

WM. GOUVERNEUR MORRIS,
U. S. Marshal,
By B. J. AKERMAN, *Deputy.*

Filed January 23d, A. D. 1873.

L. S. B. SAWYER, *Clerk,*
P'r J. F. O'BEIRNE,
Deputy Clerk.

12 *Answer of R. Olpherts and M. Costello.*

In the circuit court of the United States in and for the district of California.

WILLIAM NEWTON MEEKS, PLAINTIFF,
vs.
FERDINAND VASSAULT, MAURICE DORE, AND others, defendants.

First. Robert Olpherts and Michael Costello, two of the defendants in this suit, for answer to the complaint of said plaintiff therein, deny each and every allegation, statement, matter, and thing in said complaint contained.

Second. And for other and separate answer to said complaint, these defendants state that before and at the time of the commencement of this suit said Robert Olpherts was, and has ever since been, and still is the owner in fee of that portion of said one hundred vara lot, number ten, in the complaint named, which is described as follows:

Being a portion of subdivision number 60 of said lot, commen-
13 cing at a point on the southeasterly line of Minna street, distant 275 feet northeasterly from the northeasterly line of Third street; thence running northeasterly along said line of Minna street 36 feet; thence at right angles southeasterly 70 feet; thence at right angles southwesterly 36 feet; and thence at right angles northwesterly 70 feet, to point of commencement.

And that these defendants at the time of the commencement of this suit were not and are not now in the possession or occupation of any other portion of said lot number ten.

And that said Olpherts at the time of the commencement of this suit occupied said portion of said lot by himself and his tenant said Costello, to wit, said Costello by the license and permission of said Olpherts.

Third. And for other and separate answer to said complaint, these defendants say that neither said plaintiff nor his ancestors, predecessors, or grantors, or any of them, have been seized or possessed of any part of that portion of said lot number ten, which is particularly in
14 said second answers and defence above-described, within fifteen years next before the commencement of this suit; that no entry, peaceable or otherwise, has been made on said portion of said lot within said fifteen years next before the commencement of this suit, by plaintiff, or by his ancestors, predecessors, or grantors, or any of them, or by any person through whom they or either of them claim or have claimed title or right of possession of said lot.

And these defendants aver that said portion of said lot in said second answer above described has been continuously held and possessed and occupied adversely to all title or claim of title of or in said plaintiff or his ancestors, precedessors, or grantors, or those through whom any of them claim title or right of possession in the premises, by said Robert Olpherts and Wm. Kelly, who before the commencement of this suit sold and by deed conveyed all his interest in said land, in said second answer described, to said Robert Olpherts, and thereafter by said Robert Olpherts himself and his tenants thereof, for more than fifteen years next before and at the time of the commencement of this suit.

15 That said grantors of said Olpherts and Kelly, and said Olphert's and Kelly, more than fifteen years before the commencement of this suit, entered into the actual possession and occupation of said portion of said lot in said second answer described, under a claim of title, and not otherwise, and founded such claim of title upon a written instrument and deed of said portion of lot, and that there has been continued adverse occupation and possession of said portion of said lot, so included in such deed under said claim, for more than fifteen years next before the commencement of this suit, in and by said Olpherts and Kelly, until said conveyance, and since then by said Olpherts by himself and his tenants, and that such possession still continues in them, and that said portion of said lot so held in such adverse possession and occupation has been usually and continuously improved during all of said fifteen years, and that defendants were not at the time of the commencement of this suit in the occupation or possession of any other part of said lot.

16 Fourt'. And for other and separate answer to said complaint these defendants allege that George Harlan was at the time of his death the owner in fee of the said lot number 10. That he died intestate on or about the eighth day of July, 1850, at the county of Santa Clara, of which he was then a resident. That the probate court of said county of Santa Clara had jurisdiction in the premises. That said probate court, after due and legal notice, on the fifteenth day of June, 1855, appointed Benjamin Aspinall administrator of the estate of said George Harlan, deceased. That letters of administration on said estate were duly issued to said Aspinall, who then and there duly qualified as such administrator, gave the bond required by law in the premises, became and was the lawful and acting administrator of and on said estate.

That afterwards and while said Aspinall was so qualified and acting

No. 7, F. Lawlor as John No. 8, E. G. Denniston as John Doe No. 9, W. P. Gheen as John Doe No. 10, Mary Hogan as Mrs. S. A. Dall, Maria Murray as Mrs. John Williams, Miss J. J. Loza as Hannah Ward, Kate Melone as Hannah Coomer, Johanna Wall as Amanda A. Chitford, Mary Develin as Mrs. M. Dooly, Mr. Mitchell as Richard Roe No. 1, Jane Cox as Richard Roe No. 2, Hannah Quinn as Richard Roe No. 3, E. T. Mason as Richard Roe No. 4, Mrs. John Dunn as John Dunn, Michael Hoga . as John Hogan, Edward C. Kirby, Anthony McQuade, Catherine McQuade, Thomas O'Brien, Henry Shoenan as Henry Shoenan, and C. J. Braun as August Brandt, on the 16th day of January, A. D. 1873; upon Michael Costello, Maurice Dore, John D. Fry, J. J. Hucks as James L. Hicks, M. P. Howe, Milton S. Latham, the Montgomery Street Real Estate Co., by its secretary, H. G. Walton, Robert Olpherts, James Patterson, L. L. Treadwell, and Ferdinand Vassault, on the 17th day of January, A. D. 1873; and upon N. Bool as Patrick Burns, James Fanning as Robert Brown, Henry McLaughlin as Spencer C. Brown, Thomas Kane as Richard Carter, William Crane, by his agent Charles Quinn (who accepted service) as John Cummings, Elizabeth McGee as Margaret Foley, T. W. Goddard as M. A. Garrity, Adam Loux as E. C. Harvey, John Morrison, and Henry Koch as Henry Rosenbaum, on the 18th day of January, A. D. 1873, all in the city and county of San Francisco.

WM. GOUVERNEUR MORRIS,
U. S. Marshal,
By B. J. AKERMAN, *Deputy.*

Filed January 23d, A. D. 1873.

L. S. B. SAWYER, *Clerk,*
P'r J. F. O'BEIRNE,
Deputy Clerk.

Answer of R. Olpherts and M. Costello.

In the circuit court of the United States in and for the district of California.

WILLIAM NEWTON MEEKS, PLAINTIFF,
vs.
FERDINAND VASSAULT, MAURICE DORE, AND others, defendants.

First. Robert Olpherts and Michael Costello, two of the defendants in this suit, for answer to the complaint of said plaintiff therein, deny each and every allegation, statement, matter, and thing in said complaint contained.

Second. And for other and separate answer to said complaint, these defendants state that before and at the time of the commencement of this suit said Robert Olpherts was, and has ever since been, and still is the owner in fee of that portion of said one hundred vara lot, number ten, in the complaint named, which is described as follows:

Being a portion of subdivision number 60 of said lot, commencing at a point on the southeasterly line of Minna street, distant 275 feet northeasterly from the northeasterly line of Third street; thence running northeasterly along said line of Minna street 36 feet; thence at right angles southeasterly 70 feet; thence at right angles southwesterly 36 feet; and thence at right angles northwesterly 70 feet, to point of commencement.

And that these defendants at the time of the commencement of this suit were not and are not now in the possession or occupation of any other portion of said lot number ten.

And that said Olpherts at the time of the commencement of this suit occupied said portion of said lot by himself and his tenant said Costello, to wit, said Costello by the license and permission of said Olpherts.

Third. And for other and separate answer to said complaint, these defendants say that neither said plaintiff nor his ancestors, predecessors, or grantors, or any of them, have been seized or possessed of any part of that portion of said lot number ten, which is particularly in
14 said second answers and defence above-described, within fifteen years next before the commencement of this suit; that no entry, peaceable or otherwise, has been made on said portion of said lot within said fifteen years next before the commencement of this suit, by plaintiff, or by his ancestors, predecessors, or grantors, or any of them, or by any person through whom they or either of them claim or have claimed title or right of possession of said lot.

And these defendants aver that said portion of said lot in said second answer above described has been continuously held and possessed and occupied adversely to all title or claim of title of or in said plaintiff or his ancestors, precedessors, or grantors, or those through whom any of them claim title or right of possession in the premises, by said Robert Olpherts and Wm. Kelly, who before the commencement of this suit sold and by deed conveyed all his interest in said land, in said second answer described, to said Robert Olpherts, and thereafter by said Robert Olpherts himself and his tenants thereof, for more than fifteen years next before and at the time of the commencement of this suit.

15 That said grantors of said Olpherts and Kelly, and said Olphert's and Kelly, more than fifteen years before the commencement of this suit, entered into the actual possession and occupation of said portion of said lot in said second answer described, under a claim of title, and not otherwise, and founded such claim of title upon a written instrument and deed of said portion of lot, and that there has been continued adverse occupation and possession of said portion of said lot, so included in such deed under said claim, for more than fifteen years next before the commencement of this suit, in and by said Olpherts and Kelly, until said conveyance, and since then by said Olpherts by himself and his tenants, and that such possession still continues in them, and that said portion of said lot so held in such adverse possession and occupation has been usually and continuously improved during all of said fifteen years, and that defendants were not at the time of the commencement of this suit in the occupation or possession of any other part of said lot.

16 Fourt'. And for other and separate answer to said complaint these defendants allege that George Harlan was at the time of his death the owner in fee of the said lot number 10. That he died intestate on or about the eighth day of July, 1850, at the county of Santa Clara, of which he was then a resident. That the probate court of said county of Santa Clara had jurisdiction in the premises. That said probate court, after due and legal notice, on the fifteenth day of June, 1855, appointed Benjamin Aspinall administrator of the estate of said George Harlan, deceased. That letters of administration on said estate were duly issued to said Aspinall, who then and there duly qualified as such administrator, gave the bond required by law in the premises, became and was the lawful and acting administrator of and on said estate.

That afterwards and while said Aspinall was so qualified and acting

as such administrator, and after he had on the twenty-fifth day of August, 1855, presented his petition as such to said probate court, praying for an order and authority to sell the real estate of said
17 estate, including said lot number ten, and after said court had on the tenth day of November, 1855, duly made an order authorizing, empowering, and directing said Aspinall as such administrator to sell said real estate, and after posting and publishing notice of the time and place of such sale, and giving bond as required by law, the said Benjamin Aspinall, as such administrator and acting as such under the provisions of chapter VII of an act of said State, entitled "An act to regulate the settlement of the estates of deceased persons," approved May 1st, 1851, on the seventh day of January, 1856, between the hours of nine o'clock in the morning and the setting of the sun on that day, at an auction room, which then was a public place in said city and county of San Francisco, where said premises are situated, at public auction, sold the said portion of said lot in said second answer above described, portion of said lot number ten.

That at said sale Olpherts and Kelly were the highest and best bidders for a portion of said lot, including said part in said second answer described, and purchased the same for the sum of $395, which
18 then and there was the fair value, and not in any way disproportionate to the value thereof, and which was then and there paid to the said administrator by said purchasers thereof, as the purchase price thereof, which sale by said administrator after due notice was afterwards and before the thirteenth day of February, 1856, by said probate court confirmed, and said administrator ordered by said court to make, execute, and deliver to said purchasers a deed of conveyance of said premises.

That afterwards, on the said thirteenth day of February, 1856, the said Benjamin Aspinall, as such administrator, made, executed, and delivered to the said purchasers a deed of conveyance of said portion of said lot, and thereby granted, bargained, and sold and conveyed, and which purported to grant, bargain, and sell and convey all the estate, right, title, and interest of said George Harlan at the time of his death in and to said part of said lot in second answer above described to said Olpherts and Kelly. That immediately after the said delivery of said deed, and more than fifteen years before the commencement of
19 this suit, the said Olpherts and Kelly entered into the actual occupation and possession of said portion of said lot under said deed, claiming to own the same in fee under said deed from said Aspinall as such administrator, and by themselves and their tenants have continuously thence hitherto held and possessed the same until the 16th day of July, 1859, when said Kelly sold and by deed conveyed all his interest and title therein to said Olpherts, who has since then by himself and his tenants held and possessed, and still holds and possesses, the same, by himself and his tenant Costello, as aforesaid, and that said Olpherts and Costello at the commencement of this suit occupied said portion of said lot, to wit, said Costello by the license and permission of said Olpherts.

That more than fifteen years from the time of said sale and from the said making and delivery of said deed, and from the entry as aforesaid of said Olpherts and Kelly, under and through the same, upon said portion of said lot, and during a period of more than twelve years,
20 while the administrations of said Aspinall, and of Lucien B. Huff and Joel Harlan, respectively, were in full force, and while they

were respectively acting as such administrators on said estate, have lapsed before the commencement of this suit.

That said Benjamin Aspinall continued to be and to act as such administrator until the eighth day of August, 1863. That said Joel Harlan and Lucien B. Huff were, by said probate court, duly appointed administrators of the estate of said George Harlan, deceased, on the twelfth day of May, 1864, and letters of administration thereupon issued to them on said estate. That they thereupon duly qualified, gave bonds as required by law, and entered on the discharge of their duties as such administrators, and have since been such administrators and acting as such in the premises until the year 1871.

And these defendants deny that they were at the time of the commencement of this suit in possession of any other portion of said lot number ten than that described in said second answer.

21 And said defendants, further answering, say that the title so acquired by said conveyance from said Aspinall as such administrator to said Olpherts and Kelly was and is ratified, confirmed, and made valid and sufficient in law to and did transfer to said Olpherts the title to the portion of said lot number ten, described in said second answer, under and by virtue of the provisions of an act of the legislature of said State, entitled "An act in relation to probate sales," approved April 2d, 1866.

Fifth. And for other and separate answer to said complaint, these defendants allege that heretofore, on the thirty-first day of May, A. D. 1859, said plaintiff commenced an action in the district court of the twelfth judicial district of this State, in and for the city and county of San Francisco, against Jacob Hahn, John Dunn, John A. Richards, Wm. Robinson, John Hagan, Edward C. Kirby, Catherine Matthews, Jas. Patterson, Walter Walsh, W. Burk, Charles Brown, Tho's Hasson, Mary Noonan, Jeremiah Noonan, Thomas J. Haynes, Tho's Gil-

22 roy, James McQuade, Lewis Fillman, Henry B. Jones, Florence Crowley, Charles Moneypenny, Michael Barnes, Thomas B. Valentine, Samuel A. Morrison, George Torrens, John J. Hucks, Albion P. Bessey, Robert Olpherts, William Kelly, R. Merryman, —— Hamburg, P. Nihoof, John Smith, John Brown, John Doe, Richard Roe, Mary Smith, and Mary Brown, for the recovery of the possession of said lot number ten from said defendants therein.

That in the complaint in said action said plaintiff alleged that he then was the owner of said lot number ten, and claimed the possession from said defendants therein by reason of said alleged ownership.

That said defendants severally answered said complaint, and by their said answers denied that plaintiff was the owner of said lot, or of any part thereof; and said defendant', R. Olpherts and Wm. Kelly, by their said answer, alleged that they were the owners of said portion of said subdivision number 60 of said lot in said second answer described.

That such proceedings were thereupon had in said suit that

23 afterwards, to wit, on the twelfth day of December, 1860, the said cause on the issues therein was tried by said court and a jury (by consent of parties) of six persons.

That thereupon, on motion of plaintiff, said cause was dismissed as to said defendants Robert Olpherts and William Kelly.

That after the introduction of evidence on the part of said plaintiff, the said jury found a verdict for said defendant therein, which verdict was duly entered in the proper minutes and records of said court.

That thereupon it was by said court in said cause ordered, adjudged, and decreed that said plaintiff therein should take nothing by his said

action against the said Jacob Hahn, John Dunn, John A. Reichert, William Robinson, John Hogan, Edward C. Kirby, Catherine Patterson (late Catherine Matthews), James Patterson, Walter Walsh, John Burk (sued as W. Burk), Charles Brown, Thomas Hasson, Jeremiah Noonan, Thomas J. Haynes, Thomas Gilroy, James McQuade, Catherine McQuade, Louis Fillman, Henry B. Jones, Florence Crowley,
24 Charles Moneypenny, Michael Barden (sued as Michael Barnes), Thomas B. Valentine, Samuel A. Morrison, George Torrins, John J. Hucks, Albion P. Bessey, Richard Merriman, Charles Hamburg, Patrick Keating, Thomas Clary, William Weir, Hugh Cowan, Levi B. Kester, John Dobson, William Fox, George Dougherty, and Thomas Costillo; but that said defendants should have and recover of and from plaintiff their costs; which judgment is still in force.

That afterwards the said plaintiff appealed to the supreme court of said State from said judgment, and from the order of said court denying him a new trial therein; and that said supreme court by its judgment and decision, rendered in the August term of said supreme court, A. D. 1862, duly affirmed said judgment, and the remittitur affirming the same was duly filed in said district court on the sixteenth day of October, 1862, as by the records and proceedings in said cause in said district court of the twelfth judicial district more fully appear.

That said defendant Olpherts, at the commencement of this
25 suit by himself and his tenant Costello, occupied said portion of said subdivision number 60, to wit, said Costello by the license and permission of said Olpherts.

And these defendants deny that they or either of them at the time of the commencement of this suit were in possession of any portion of said lot number ten, other than the part thereof which is described in said second answer.

Seventh. And for other and separate answer to said complaint, these defendants allege that on the 15th day of April, 1858, said plaintiff commenced a suit, commonly called an action of ejectment, in the district court of the fifteenth judicial district of the State of California, in and for the city and county of San Francisco, against Miller & Co., T. Miller, E. C. Kirby, John Pennyman, John Pennimon, Mary Roe Conrad, John Shultz, John Schults, Thos. O'Brien, Hanna Ward, Morris Michels, Margaret Burk, John Murphy, Mrs. Brown, Mary Brown, John Doe Brown, H. Rosenbaum, Jane Cox, Robert Brown, John Brown, Angus Leslie, Mary Leslie, R. W. Roland, Amanda E. Whitford, Salvator Marcelini, Chas. Lawrence, John Williams, J. A. Caldwell,
26 August Brandt, John Benson, John Maloney, Jacob Schmidt, D. Harris, John Burk, Patrick Burns, Bridget Barden, Henry Cheno, Mrs. S. Simpson, John Eyre, Martha Crump, Henry Petisson, James Hogan, James Hogan, Olphant, Oliphant, C. McQuade, Wm. Parker, John Cleary, Jane Quirk, Lewis Braing, Margaret Foley, August Bansch, Barnard O'Farrell, Michael Reynolds, Simon Rumley, Frederickson, Hans Smith, Champagne Charlie, Coal Oil Tommy, Patrick from Cork, Michael from Tipperary, John Doe, Richard Roe, John Doe, jr., Richard Roe, jr., John Doe 2d, Richard Roe 2d, John Doe 3d, and Richard Roe 3d, for the recovery of said one hundred vara lot number ten.

That said defendants are and were respectively the defendants in this action, or the grantors or tenants respectively of these defendants.

That in his complaint in said suit in said fifteenth district court, said plaintiff alleged that he was the owner in fee, and entitled to the possession of said lot number ten.

That the defendants therein respectively answered said com-
27 plaint, and respectively denied in their answers the alleged title and right of possession of said plaintiff therein to said lot, and respectively alleged ownership of the several portions thereof, claimed by each, in themselves respectively, or their lessors.

That such proceedings were thereupon had in said fifteenth district court; that a trial of said action was had before the court without a jury (a jury having been by counsel of the parties waived) on the 30th day of August, 1868, and on the said trial said plaintiff was nonsuited, and a judgment of nonsuit for said defendants therein was entered on the 2d day of September, 1868, in the said court.

That afterwards, in due time, on the 20th day of September, 1870, an appeal was taken in said cause by said plaintiff from said judgment of nonsuit of said district court to the supreme court of the State of California, the transcript on said appeal being duly prepared and filed in said supreme court, and that said cause and said appeal was at
28 the time of the commencement of this suit and still is pending in said supreme court, in no way affirmed, reversed, or decided.

Wherefore, these defendants pray for judgment, that the said alleged claim of plaintiff to said lot may be adjudged to be wholly void as against these defendants.

That said defendant Olpherts be decreed to be the owner, and entitled to the possession of said part of said lot, which is described in said second answer.

That plaintiff and his grantees and assigns be forever enjoined by the order of this court from claiming or pretending to claim, and from bringing suit for the said portion of said lot; and that defendants have judgment for their costs of this suit.

A. CAMPBELL AND CHAS. N. FOX,
Attorneys for said Defendants.

(Endorsed:) Service of a copy of the within answer hereby admitted this first day of April, A. D. 1873.

WM. H. PATTERSON,
Attorney for Plaintiff.

29 Filed 1st April, A. D. 1873.

L. S. B. SAWYER, *Clerk*,
By J. F. O'BEIRNE,
Deputy Clerk.

30 *Answer of J. J. Hucks and W. P. Gheen.*

In the circuit court of the United States in and for the district of California.

WILLIAM NEWTON MEEKS, PLAINTIFF,
vs.
FERDINAND VASSAULT, MAURICE DORÉ, AND others, defendants.

First. J. J. Hucks and William P. Gheen, two of the defendants in this suit, for answer to the complaint of said plaintiff, therein deny each and every allegation, statement, matter and thing in said complaint contained.

Second. And for other and separate answer to said complaint, these

defendants state that before and at the time of the commencement of this suit J. J. Hucks was and has ever since been and still is the owner in fee of that portion of said one hundred vara lot number ten in complaint named, which is described as follows: Being subdivision number
31 57 thereof, commencing at a point on the southeasterly line of Minna street, distant three hundred and sixty-one (361) feet northeasterly from the northeasterly line of Third street; thence northeasterly on said line of Minna street thirty feet four and one-half inches (30 4½); thence, at right angles, southeasterly seventy (70) feet; thence, at right angles, southwesterly thirty feet four and one-half inches (30.4½); and thence, at right angles, northwesterly seventy (70) feet to the point of commencement. And that these defendants at the time of the commencement of this suit were not and are not now in the possession or occupation of any other portion of said lot number ten. And that said Wm. P. Gheen at the time of the commencement of this suit occupied said portion of said lot by the license and permission of said Hucks.

Third. And for other and separate answer to said complaint these defendants say, that neither said plaintiff nor his ancestors, predecessors or grantors, or any of them, have been seized or possessed
32 of any part of that portion of said lot number ten which is particularly in said second answer and defence above described within fifteen years next before the commencement of this suit; that no entry, peaceable or otherwise, has been made on said portion of said lot within said fifteen years next before the commencement of this suit by plaintiff, or by his ancestors, predecessors or grantors, or any of them, or by any person through whom they or either of them claim or have claimed title or right of possession of said lot. And these defendants aver that said portion of said lot in said second answer above described has been continuously held and possessed and occupied adversely to all title, or claim of title, of or in said plaintiff or his ancestors, predecessors or grantors, or those through whom any of them claim title or right of possession in the premises by said Hucks and his grantors by himself and his tenants thereof for more than fifteen years next before and at the time of the commencement of this suit.

That said grantors of said Hucks and said Hucks more than
33 fifteen years before the commencement of this suit entered into the actual possession and occupation of said portion of said lot in said second answer described under a claim of title, and not otherwise, and founded such claim of title upon a written instrument and deed of said portion of said lot, and that there has been continued adverse occupation and possession of said portion of said lot so included in such deed under said claim for more than fifteen years next before the commencement of this suit in and by said Hucks and his grantors and their tenants, and that such possession still continues in them, and that said portion of said lot so held in such adverse possession and occupation has been usually and continuously improved during all of said fifteen years, and that defendants were not at the time of the commencement of this suit in the occupation or possession of any other part of said lot.

Fourth. And for other and separate answer to said complaint these defendants allege that George Harlan was at the time of his death
34 the owner in fee of the said lot number ten; that he died intestate on or about the eighth day of July, 1850, at the county of Santa Clara, of which he was then a resident; that the probate court of said county of Santa Clara had jurisdiction in the premises; that said probate court, after due and legal notice, on the fifteenth day of June,

1855, appointed Benjamin Aspinall administrator of the estate of said George Harlan, deceased; that letters of administration on said estate were duly issued to said Aspinall, who then and there duly qualified as such administrator, gave the bond required by law in the premises, became and was the lawful and acting administrator of and in said estate.

That afterwards, and while said Aspinall was so qualified and acting as such administrator, and after he had on the twenty-fifth day of August, 1855, presented his petition as such to said probate court praying for an order and authority to sell the real estate of said estate, including said lot number ten, and after said court had, on the
35 tenth day of November, 1855, duly made an order, authorizing, empowering, and directing said Aspinall, as such administrator, to sell said real estate, and after posting and publishing notice of the time and place of such sale, and giving bond as required by law, the said Benjamin Aspinall, as such administrator and acting as such under the provisions of chapter VII of an act of said State, entitled "An act to regulate the settlement of the estates of deceased persons," approved May 1st, 1851, on the seventh day of January, 1856, between the hours of nine o'clock in the morning and the setting of the sun on that day, at an auction room, which then was a public place in said city and county of San Francisco, where said premises are situated, at public auction, sold the said portion of said lot in said second answer above described, portion of said lot number ten. That at said sale Charles R. Thayer was the highest and best bidder for a portion of said lot, including said part in said second answer described, and purchased the same for the
36 sum of $390, which then and there was the fair value, and not in any way disproportionate to the value thereof, and which was then and there paid to the said administrator by said purchaser thereof as the purchase price thereof; which sale by said administrator after due notice was afterwards and before the thirteenth day of February, 1856, by said probate court confirmed, and said administrator ordered by said court to make, execute, and deliver to said purchaser a deed of conveyance of said premises.

That afterwards, on the said thirteenth day of February, 1856, the said Benjamin Aspinall, as such administrator, made, executed, and delivered to the said purchaser a deed of conveyance of said portion of said lot, and thereby granted, bargained, and sold and conveyed, and which purported to grant, bargain, and sell and convey all the estate, right, title, and interest of said George Harlan at the time of his death, in and to said part of said lot in said second answer above described, to said Thayer.

That on the 4th day of March, 1859, said J. J. Hucks became the
37 owner in fee of said premises in said second answer, described by and through certain deeds and mesne conveyances from said Thayer.

That immediately after the said delivery of said deed to said Thayer, and more than fifteen years before the commencement of this suit, the said Thayer entered into the actual occupation and possession of said portion of said lot under said deed, claiming to own the same in fee under said deed from said Aspinall, as such administrator, and by himself and his tenants has continuously thence hitherto held and possessed the same until he sold and conveyed the same by deed to his grantees, who thenceforth held and occupied the same until said conveyance to said Hucks, who thenceforth has held and occupied the same, and still holds and possesses the same by himself and his tenants, and that said Gheen

at the commencement of this suit occupied said portion of said lot by the license and permission of said Hucks.

That more than fifteen years from the time of said sale, and from the said making and delivery of said deed, and from the entry as
38 aforesaid of said Thayer under and through the same upon said portion of said lot, and during a period of more than twelve years while the administrations of said Aspinall and of Lucien B. Huff and Joel Harlan, respectively, were in full force, and while they were respectively acting as such administrators on said estate, have elapsed before the commencement of this suit.

That said Benjamin Aspinall continued to be and to act as such administrator until the eighth day of August, 1863. That said Joel Harlan and Lucien B. Huff were by said probate court duly appointed administrators of the estate of said George Harlan, deceased, on the twelfth day of May, 1864, and letters of administration thereupon issued to them on said estate. That they thereupon duly qualified, gave bonds as required by law, and entered on the discharge of their duties as such administrators, and have since been such administrators and acting as such in the premises, until the year 1871.

And these defendants deny that they were at the time of the commencement of this suit in possession of any other portion of said lot number ten than that described in said second answer.

39 And said defendants further answering say, that the title so acquired by said conveyance from said Aspinall, as such administrator, to said Thayer, was and is ratified, confirmed, and made valid and sufficient in law to, and did, transfer to said Thayer and his said grantee Hucks the title to the portion of said lot number ten, described in said second answer, under and by virtue of the provisions of an act of the legislature of said State, entitled "An act in relation to probate sales," approved April 2d, 1866.

Fifth. And for other and separate answer to said complaint, these defendants allege that heretofore, on the thirty-first day of May, A. D. 1859, said plaintiff commenced an action in the district court of the twelfth judicial district of this State, in and for the city and county of San Francisco, against Jacob Hahn, John Dunn, John A. Riechert, Wm. Robinson, John Hagén, Edward C. Kirby, Catherine Matthews, Jas. Patterson, Walter Walsh, W. Burk, Charles Brown, Thos. Hasson, Mary Noonan, Jeremiah Noonan, Thomas Y. Haynes, Thos. Gilroy, James Mc-
40 Quade, Louis Fillman, Henry B. Jones, Florence Crowley, Charles Moneypenny, Michael Barnes, Thomas B. Valentine, Samuel A. Morrison, George Torrens, John J. Hucks, Albion P. Bessey, Robert Olpherts, William Kelley, R. Merryman, —— Hamburg, P. Nihoof, John Smith, John Brown, John Doe, Richard Roe, Mary Smith, and Mary Brown, for the recovery of the possession of said lot number ten from said defendants therein.

That in the complaint in said action said plaintiff alleged that he then was the owner of said lot number ten, and claimed the possession from said defendants therein by reason of said alleged ownership.

That said defendants severally answered said complaint, and by their said answers denied that plaintiff was the owner of said lot, or of any part thereof, and said defendant J. J. Hucks, by his said answer, alleged that he was the owner of said subdivision number 57.

That such proceedings were thereupon had in said suit, that afterwards, to wit, on the twelfth day of December, 1860, the said cause on the issues therein was tried by said court, and a jury (by consent of parties) of six persons.

That, thereupon, on motion of plaintiff, said cause was dismissed as to said defendants Robert Olpherts and William Kelley.

That after the introduction of evidence on the part of said plaintiff, the said jury found a verdict for said defendant therein, which verdict was duly entered in the proper minutes and records of said court.

That thereupon, it was by said court in said cause ordered, adjudged, and decreed, that said plaintiff therein should take nothing by his said action against the said Jacob Hahn, John Dunn, John A. Riechert, William Robinson, John, Hagan, Edward C. Kirby, Catherine Patterson (late Catherine Matthews). James Patterson, Walter Walsh, John Burk (sued as W. Burk), Charles Brown, Thomas Hasson Jeremiah Noonan, Thomas J. Haynes, Thomas Gilroy, James McQuade, Catherine McQuade, Louis Fillman, Henry B. Jones, Florence Crowley, Charles Moneypenny, Michael Borden (sued as Michael Barnes), Thomas B. Valentine, Samuel A. Morrison, George Torrens, John J. Hucks, Albion P. Bessey, Richard Merriman, Charles Hamburg, Patrick Kenting, Thomas
42 Clary, William Weir, Hugh Cowan, Levi B. Kester, John Dobson, William Fox, George Dougherty, and Thomas Castillo; but that said defendants should have and recover of and from plaintiff their costs; which judgment is still in full force.

That afterwards the said plaintiff appealed to the supreme court of said State from said judgment, and from the order of said court denying him a new trial therein, and that said supreme court by its judgment and decision rendered in the August term of said supreme court A. D. 1862, duly affirmed said judgment, and the remittitur affirming the same was duly filed in said district court on the sixteenth day of October, 1862, as by the records and proceedings in said cause in said district court of the twelfth judicial district more fully appear.

The said defendant Gheen, at the commencement of this suit, occupied said subdivision number 57 by the license and permission of said Hucks.

And these defendants deny that they or either of them at the time of the commencement of this suit were in possession of any por-
43 tion of said lot number ten, other than the part thereof which is described in said second answer.

Seventh. And for other and separate answer to said complaint, these defendants allege that on the 15th day of April, 1868, said plaintiff commenced a suit, commonly called an action of ejectment, in the district court of the fifteenth judicial district of the State of California, in and for the city and county of San Francisco, against Miller & Co., T. Miller, E. C. Kirby, John Pennyman, John Penniman, Mary Roe Conrad, John Shultz, John Schults, Tho's O'Brien, Tho's O'Brian, Hanna Ward, Morris Michels, Margaret Burk, John Murphy, Mrs. Brown, Mary Brown, John Doe Brown, H. Rosenbaum, Jane Cox, Robert Brown, John Brown, Angus Leslie, Mary Leslie, R. W. Roland, Amanda E. Whitford, Salvator Marcelini, Cha's Lawrence, John Williams, J. A. Caldwell, August Brandt, John Benson, John Maloney, Jacob Schmidt, D. Harris, John Burk, Patrick Burns, Bridget Barden, Henry Cheno, Mrs. S. Simpson, John Eyre, Martha Crump, Henry Peterson, James Hogan, James Hagan, Olphant, Oliphant, C. McQuade, Wm. Parker, John Cleary, Jane Quirk, Louis Branig.
44 Margaret Foley, August Bausch, Barnard O'Farrell, Michael Reynolds, Simon Rumley, Frederickson, Hans Smith, Champagne Charlie, Coal Oil Tommy, Patrick from Cork, Michael from Tipperary, John Doe, Richard Roe, John Doe, jr., Richard Roe,

jr., John Doe 2d, Richard Roe 2d, John Doe 3d, and Richard Roe 3d, for the recovery of said one hundred vara lot number ten.

That said defendants are and were respectively the defendants in this action, or the grantors or tenants respectively of these defendants. That in his complaint in said suit in said fifteenth district court, said plaintiff alleged that he was the owner in fee, and entitled to the possession of said lot number ten. That the defendants therein respectively answered said complaint, and respectively denied in their answers the alleged title and right of possession of said plaintiff therein to said lot, and respectively alleged ownership of the several portions thereof, claimed by each in themselves respectively, or their lessors.

That such proceedings were thereupon had in said fifteenth district court, that a trial of said action was had before the court without a jury (a jury having been by counsel of the parties waived), on the 30th day of August, 1868, and on the said trial said plaintiff was nonsuited, and a judgment of nonsuit for said defendants therein was entered on the 2d day of September, 1868, in the said court.

That afterwards, in due time, on the 20th day of September, 1870, an appeal was taken in said cause by said plaintiff from said judgment of nonsuit of said district court to the supreme court of the State of California, the transcript on said appeal being duly prepared and filed in said supreme court, and that said cause and said appeal was at the time of the commencement of this suit and still is pending in said supreme court, in no way affirmed, reversed, or decided.

Wherefore these defendants pray for judgment that the said alleged claim of plaintiff to said lot may be adjudged to be wholly void as against these defendants.

That said defendant Hucks be decreed to be the owner, and entitled to the possession of said part of said lot which is described in said second answer.

That plaintiff and his grantees and assigns be forever enjoined by the order of this court from claiming or pretending to claim, and from bringing suit for, the said portion of said lot; and that defendants have judgment for their costs of this suit.

A. CAMPBELL AND
CHA'S N. FOX,
Attorneys for said Defendants.

(Endorsed:) Service of a copy of the within answer hereby admitted this first day of April, A. D. 1873.

WM. H. PATTERSON,
Attorney for Plaintiff.

Filed 1st April, A. D. 1873.

L. S. B. SAWYER,
Clerk.
By J. F. O'BEIRNE,
Deputy Clerk.

47 *Answer of Edw'd C. Kirby and others.*

In the circuit court of the United States in and for the district of California.

WILLIAM NEWTON MEEKS, PLAINTIFF,
vs.
FERDINAND VASSAULT, MAURICE DORÉ, AND others, defendants.

First. Edward C. Kirby, Michael Hogan, John Duffey, James Fanning, E. G. Denniston, John Morrison, Mary Hogan, T. W. Goddard, Adam Laux, and August Gast, ten of the defendants in this suit, for answer to the complaint of said plaintiff therein, deny each and every allegation, statement, matter, and thing in said complaint contained.

Second. And for other and separate answer to said complaint, these defendants state that before and at the time of the commencement of this suit said Edward C. Kirby was, and has ever since been, and still is, the owner in fee of that portion of said one hundred vara lot,
48 number ten, in complaint named, which is described as follows: Being subdivision numbers 36, 37, 38, 47, and 48, of said lot, commencing at a point on the southeasterly line of Mission street, distant 297 feet 2 inches northeasterly from the northeasterly line of Third street; thence northeasterly along said line of Mission street 66 feet six inches; thence at right angles southeasterly 80 feet; thence at right angles northeasterly 7 feet and 4 inches; thence at right angles southeasterly 80 feet to the northwesterly line of Munia street; thence southwesterly along the last-named line 50 feet; thence at right angles northwesterly 80 feet, and thence at right angles southwesterly 23 feet 10 inches, and thence at right angles north-northwesterly 80 feet to commencement. And that these defendants, at the time of the commencement of this suit, were not, and are not now, in the possession or occupation of any other portion of said lot number ten.

And that said Kirby, at the time of the commencement of this suit, occupied said portion of said lot above described by himself and
49 his tenants, to wit, said Michael Hogan, Duffey, Fanning, Denniston, Morrison, Mary Hogan, Goddard, Laux, Gast, by the license and permission of said Kirby.

Third. And for other and separate answer to said complaint, these defendants say that neither said plaintiff nor his ancestors, predecessors, or grantors, or any of them, have been seized or possessed of any part of that portion of said lot number ten, which is particularly in said second answer and defence above-described within fifteen years next before the commencement of this suit; that no entry, peaceable or otherwise, has been made on said portion of said lot within said fifteen years next before the commencement of this suit by plaintiff, or by his ancestors, predecessors, or grantors, or any of them, or by any person through whom they or either of them claim, or have claimed, title or right of possession of said lot. And these defendants aver that said portion of said lot in said second answer above described has been continuously held and possessed and occupied adversely to all title, or claim
50 of title, of, or in, said plaintiff, or his ancestors, predecessors, or grantors, or those through whom any of them claim title or right of possession in the premises by said Kirby and his grantors by themselves and their tenants thereof for more than fifteen years next before and at the time of the commencement of this suit.

That said Kirby and his grantors more than fifteen years before the commencement of this suit entered into the actual possession and occupation of said portion of said lot in said second answer described under a claim of title, and not otherwise, and founded such claim of title upon a written instrument and deed of said portion of said lot, and that there has been continued adverse occupation and possession of said portion of said lot so included in such deed under said claim for more than fifteen years next before the commencement of this suit in and by said Kirby and his grantors by themselves and their respective tenants, and that such possession still continues in said Kirby and his said
51 tenants, to wit, said Michael Hogan, Duffey, Fanning, Denniston, Morrison, Mary Hogan, Goddard, Laux, and Gast, by the license and permission of said Kirby, and that said portion of said lot so held in such adverse possession and occupation has been usually and continuously improved during all of said fifteen years, and that defendants were not at the time of the commencement of this suit in the occupation or possession of any other part of said lot.

Fourth. And for other and separate answer to said complaint, these defendants allege that George Harlan was at the time of his death the owner in fee of the said lot number ten; that he died intestate on or about the eighth day of July, 1850, at the county of Santa Clara, of which he was then a resident; that the probate court of said county of Santa Clara had jurisdiction in the premises; that said probate court, after due and legal notice, on the fifteenth day of June, 1855, appointed Benjamin Aspinall administrator of the estate of said George Har-
52 lan, deceased; that letters of administration on said estate were duly issued to said Aspinall, who then and there duly qualified as such administrator, gave the bond required by law in the premises, became and was the lawful and acting administrator of and on said estate.

That afterwards, and while said Aspinall was so qualified and acting as such administrator, and after he had, on the twenty-fifth day of August, 1855, presented his petition as such to said probate court, praying for an order and authority to sell the real estate of said estate, including said lot number ten; and after said court had, on the tenth day of November, 1855, duly made an order authorizing, empowering, and directing said Aspinall, as such administrator, to sell said real estate, and after posting and publishing notice of the time and place of such sale, and giving bond as required by law, the said Benjamin Aspinall, as such administrator and acting as such under the provisions of chapter VII of an act of said State entitled "An act to regulate the settlement of the estates of deceased persons," approved May 1st, 1851,
53 on the seventh day of January, 1856, between the hours of nine o'clock in the morning and the setting of the sun on that day, at an auction room, which then was a public place, in said city and county of San Francisco, where said premises are situated, at public auction, sold the said portion of said lot in said second answer above described, portion of said lot number ten.

That at said sale John Robinette and John Phecara were the highest and best bidders for a portion of said lot, including said part in said second answer described, and purchased the same for the sum of $1,920, which then and there was the fair value, and not in any way disproportionate to the value thereof, and which was then and there paid to the said administrator by said purchasers thereof, as the purchase price thereof, which sale by said administrator after due notice was afterwards and before the thirteenth day of February, 1856, by said probate court confirmed, and said administrator ordered by said court to make, exe-

cute, and deliver to said purchasers deeds of conveyance of said
54 premises. That afterwards, on the said thirteenth day of February, 1856, the said Benjamin Aspinall, as such administrator, made, executed, and delivered to the said purchasers deeds of conveyances of said portions of said lot, and thereby granted, bargained, and sold and conveyed, and which purported to grant, bargain, and sell and convey, all the estate, right, title, and interest of said George Harlan at the time of his death in and to said parts of said lots in said second answer above described, to said John Robinette and John Phecara, who afterwards, to wit, said Robinette on the 27th August, 1839, and the said Phecara on the 13 February, 1856, respectively sold and by deeds conveyed their respective interests and title in said part of said lot in said second answer described to said Kirby, who since said conveyances last aforesaid, and at the time of the commencement of this suit, by himself and his tenants, held and possessed the same.

That immediately after the said delivery of said deeds, and more than fifteen years before the commencement of this suit, the
56 said John Robinette and John Phecara entered into the actual occupation and possession of said portion of said lot under said deed, claiming to own the same in fee under said deed, from said Aspinall as such administrator, and by themselves and their tenants have continuously thence hitherto held and possessed the same until said conveyances by said Robinette and Phecara respectively to said Kirby, who has since said conveyances to him held and possessed the same by himself and his tenants, and still holds and possesses the same by himself and his tenants, to wit, said Michael Hogan, Duffy, Fanning, Denniston, Morrison, Mary Hogan, Laux, and Gast, by the license and permission of said Kirby. That more than fifteen years from the time of said sale, and from the said making and delivery of said deeds, and from the entry as aforesaid of said John Robinette and John Phecara under and through the same upon said portion of said lot, and during a period of more than twelve years, while the administrators of said Aspinwall and of Lucien B. Huff and Joel Harlan respect-
56 ively were in full force, and while they were respectively acting as such administrators on said estate, have elapsed before the commencement of this suit.

That said Benjamin Aspinall continued to be and to act as such administrator until the eighth day of August, 1863. That said Joel Harlan and Lucien B. Huff were, by said probate court, duly appointed administrators of the estate of said George Harlan, deceased, on the twelfth day of May, 1864, and letters of administration thereupon issued to them on said estate. That they thereupon duly qualified, gave bonds as required by law, and entered on the discharge of their duties as such administrators, and have since been such administrators and acting as such in the premises until the year 1871.

And these defendants deny that they were at the time of the commencement of this suit in possession of any other portion of said lot number ten than that described in said second answer.

And said defendants, further answering, say that the title so acquired by said conveyance from said Aspinall as such administrator to
57 said John Robinette and John Phecara was and is ratified, confirmed, and made valid and sufficient in law to, and did transfer to said John Robinette and John Phecara and their grantee as aforesaid, said Kirby, the title to the portion of said lot number ten, described in said second answer, under and by virtue of the provisions of an act

of the legislature of said State, entitled "An act in relation to probate sales," approved April 2d, 1866.

Fifth. And for other and separate answer to said complaint these defendants allege that heretofore, on the thirty-first day of May, A. D. 1859, said plaintiff commenced an action in the district court of the twelfth judicial district of this State, in and for the city and county of San Francisco, against Jacob Hahn, John Dunn, John A. Riechert, Wm. Robinson, John Hagen, Edward E. Kirby, Catherine Matthews, Jas. Patterson, Walter Walsh, W. Burk, Charles Brown, Thos. Hasson, Mary Noonan, Jeremiah Noonan, Thomas J. Haynes, Thos. Gilroy, James McQuade, Louis Fillman, Henry B. Jones, Florence Crowley,
Charles Moneypenny, Michael Barnes, Thomas B. Valentine,
58 Samuel A. Morrison, George Torrens, John J. Hucks, Albin P.
Bessey, Robert Olpherts, William Kelley, R. Merryman,
Hamburg, P. Nehoof, John Smith, John Brown, John Doe, Richard Roe, Mary Smith, and Mary Brown, for the recovery of the possession of said lot number ten from said defendants therein.

That in the complaint in said action said plaintiff alleged that he then was the owner of said lot number ten and claimed the possession from said defendants therein by reason of said alleged ownership.

That said defendants severally answered said complaint, and by their said answers denied that plaintiff was the owner of said lot, or of any part thereof; and said defendant E. C. Kirby, by his said answer, alleged that he was the owner of said premises in said second answer described.

That such proceedings were thereupon had in said suit that afterwards, to wit, on the twelfth day of December, 1860, the said cause, on the issues therein, was tried by said court, and a jury (by consent of parties) of six persons.

59 That thereupon, on motion of plaintiff, said cause was dismissed as to said defendants Robert Olpherts and William Kelley.

That after the introduction of evidence on the part of said plaintiff the said jury found a verdict for said defendants therein and for said E. C. Kirby, which verdict was duly entered in the proper minutes and records of said court.

That thereupon it was by said court in said cause ordered, adjudged, and decreed that said plaintiff therein should take nothing by his said action against the said Jacob Hahn, John Dunn, John A. Reichert, William Robinson, John Hagan, Edward C. Kirby, Catherine Patterson (late Catherine Matthews), James Patterson, Walter Walsh, John Burke (sued as W. Burk), Charles Brown, Thomas Hassan, Jeremiah Noonan, Thomas J. Haynes, Thomas Gilroy, James McQuade, Catherine McQuade, Louis Fillman, Henry B. Jones, Florence Crowley, Charles Moneypenny, Michael Barden (sued as Michael Barnes), Thomas B.
Valentine, Samuel A. Morrison, George Terrens, John J. Hucks,
60 Albion P. Bessey, Richard Merriman, Charles Hamburg, Patrick
Keating, Thomas Clary, William Weir, Hugh Cowan, Levi B. Hester, John Dobson, William Fox, George Dougherty and Thomas Castillo, but that said defendants should have and recover of and from plaintiff their costs, which judgment is still in full force.

That afterwards the said plaintiff appealed to the supreme court of said State from said judgment, and from the order of said court denying him a new trial therein; and that said supreme court by its judgment and decision rendered in the August term of said supreme court, A. D. 1862, duly affirmed said judgment, and the remittitur affirming the same was duly filed in said district court on the sixteenth day of Octo-

ber, 1862, as by the records and proceedings in said cause in said district court of the twelfth judicial district more fully appear.

That said defendant E. D. Kirby at the commencement of this suit occupied said portion of said lot in said second answer described,
61 by himself and his tenants, to wit, said Michael Hogan, Duffey Fanning, Denniston Morrison, Mary Hogan, Goddard Lanx, and Gast, by the license and permission of said Kirby.

And these defendants deny that they or either of them at the time of the commencement of this suit were in possession of any portion of said lot number ten, other than the part thereof which is described in said second answer.

Seventh. And for other and separate answer to said complaint, these defendants allege that on the 15th day of April, 1868, said plaintiff commenced a suit, commonly called an action of ejectment, in the district court of the fifteenth judicial district of the State of California, in and for the city and county of San Francisco, against Miller & Co., T. Miller, E. C. Kirby, John Pennyman, John Penniman, Mary Roe Conrad, John Shultz, John Schults, Tho's O'Brien, Tho's O'Brian, Hanna Ward, Morris Michels, Margaret Burk, John Murphy, Mrs. Brown, Mary Brown, John Doe Brown, H. Rosenbaum, Jane Cox, Robert Brown, John Brown, Angus Leslie, Mary Leslie, R. W. Roland,
62 Amanda E. Whitford, Salvator Marcelini, Cha's Lawrence, John Williams, J. A. Caldwell, August Brandt, John Benson, John Maloney, Jacob Schmidt, D. Harris, John Burk, Patrick Burns, Bridget Bardon, Henry Cheno, Mrs. S. Simpson, John Eyre, Martha Crump, Henry Peterson, James Hogan, James Hagan, Oliphant, Olephant, C. McQuade, Wm. Parker, John Cleary, Jane Quirk, Lewis Branig, Margaret Foley August Bausch, Barnard O'Farrell, Michael Reynolds, Simon Rumley, Frederickson, Hans Smith, Champagne Charlie, Coal Oil Tommy, Patrick from Cork, Michael from Tipperary, John Doe, Richard Roe, John Doe, jr., Richard Roe, jr., John Doe, 2d, Richard Roe, 2d, John Doe, 3d, and Richard Roe, 3d, for the recovery of said one hundred vara lot number ten.

That said defendants are and were respectively the defendants in this action, or the grantors or tenants respectively of these defendants. That in his complaint in said suit in said fifteenth district court, said plaintiff alleged that he was the owner in fee, and entitled to the possession of said lot number ten. That the defendants
63 therein respectively answered said complaint, and respectively denied in their answers the alleged title and right of possession of said plaintiff therein to said lot, and respectively alleged ownership of the several portions thereof, claimed by each, in themselves respectively, or their lessors.

That such proceedings were thereupon had in said fifteenth district court; that a trial of said action was had before the court without a jury (a jury having been by counsel of the parties waived) on the 30th day of August, 1868, and on the said trial said plaintiff was nonsuited, and a judgment of nonsuit for said defendants therein was entered on the 2d day of September, 1868, in the said court.

That afterwards, in due time, on the 20th day of September, 1870, an appeal was taken in said cause by said plaintiff from said judgment of nonsuit of said district court to the supreme court of the State of California, the transcript on said appeal being duly prepared and filed in said supreme court, and that said cause and said appeal was at
64 the time of the commencement of this suit and still is pending in said supreme court, in no way affirmed, reversed, or decided.

Wherefore, these defendants pray for judgment that the said alleged claim of plaintiff to said lot may be adjudged to be wholly void as against these defendants.

That said defendant E. C. Kirby be decreed to be the owner and entitled to the possession of said part of said lot which is described in said second answer.

That plaintiff and his grantees and assignes be forever enjoined by the order of this court from claiming or pretending to claim, and from bringing suit for the said portion of said lot; and that defendants have judgment for their costs of this suit.

A. CAMPBELL AND
CHAS. N. FOX,
Attorneys for said Defendants.

(Endorsed:)

Service of a copy of the within answer hereby admitted this first day of April, A. D. 1873.

WM. H. PATTERSON,
Attorney for Plaintiff.

Filed April 1st, A. D. 1873.

L. S. P. SAWYER, *Clerk*,
By J. F. O'BEIRNE,
Dep. Clk.

65 *Answer of Wm. Robinson and others.*

In the circuit court of the United States in and for the district of California.

WILLIAM NEWTON MEEKS, PLAINTIFF,
vs.
FERDINAND VASSAULT, MAURICE DORE, and others, defendants.

First. William Robinson, Maria Murray, and William Taylor, three of the defendants in this suit, for answer to the complaint of said plaintiff therein deny each and every allegation, statement, matter, and thing in said complaint contained.

Second. And for other and separate answer to said complaint these defendants state that before and at the time of the commencement of this suit said Robinson was and has ever since been and still is the owner in fee of that portion of said one hundred vara lot number ten in complaint named, which is described as follows (being subdivision
66 number 33 of said lot): Commencing at a point on the southeasterly line of Mission street, distant four hundred and eight feet easterly from the northeasterly line of Third street, thence running northeasterly along said line of Mission street twenty-five (25) feet by a uniform depth southeasterly at right angles to said Mission street of eighty (80). And that these defendants at the time of the commencement of this suit were not and are not now in the possession or occupation of any other portion of said lot number ten, and that said Murray and Taylor at the time of the commencement of this suit occupied said portion of said lot by the license and permission of said Robinson.

Third. And for other and separate answer to said complaint these defendants say that neither said plaintiff nor his ancestors, predecessors, or grantors, or any of them, have been seized or possessed of any part of

that portion of said lot number ten which is particularly in said second answer and defence above described, within fifteen years next before the commencement of this suit, that no entry, peaceable or other-
67 wise, has been made on said portion of said lot within said fifteen years next before the commencement of this suit by plaintiff, or by his ancestors, predecessors, or grantors, or any of them, or by any person through whom they or either of them claim or have claimed title or right of possession of said lot. And these defendants aver that said portion of said lot in said second answer above described has been continuously held, and possessed, and occupied adversely to all title or claim of title of or in said plaintiff or his ancestors, predecessors, or grantors, or those through whom any of them claim title or right of possession in the premises, by said Robinson, by himself and his tenants thereof, for more than fifteen years next before and at the time of the commencement of this suit.

That said Robinson, more than fifteen years before the commencement of this suit, entered into the actual possession and occupation of said portion of said lot in said second answer described under a claim of title, and not otherwise, and founded such claim of title upon a written in-
68 strument and deed of said portion of said lot, and that there has been continued adverse occupation and possession of said portion of said lot so included in such deed under said claim for more than fifteen years next before the commencement of this suit in and by said Robinson by himself and his tenants, and that such possession still continues in them, and that said portion of said lot so held in such adverse possession and occupation has been usually and continuously improved during all of said fifteen years; and that defendants were not, at the time of the commencement of this suit, in the occupation or possession of any other part of said lot.

Fourth. And for other and separate answer to said complaint, these defendants allege that George Harlan was, at the time of his death, the owner in fee of the said lot number ten; that he died intestate on or about the eighth day of July, 1850, at the county of Santa Clara, of which he was then a resident; that the probate court of said county of Santa Clara had jurisdiction in the premises; that said probate court, after due and legal notice, on the fifteenth day of June, 1855, ap-
69 pointed Benjamin Aspinall, administrator of the estate of said George Harlan, deceased; that letters of administration on said estate were duly issued to said Aspinall, who then and there duly qualified as such administrator, gave the bond required by law in the premises, became and was the lawful and acting administrator of and on said estate.

That afterwards, and while said Aspinall was so qualified and acting as such administrator, and after he had, on the twenty-fifth day of August, 1855, presented his petition as such to said probate court, praying for an order and authority to sell the real estate of said estate, including said lot number ten, and after said court had, on the tenth day of November, 1855, duly made an order authorizing, empowering, and directing said Aspinall, as such administrator, to sell said real estate, and after posting and publishing notice of the time and place of such sale, and giving bond as required by law, the said Benjamin Aspinall, as such administrator, and acting as such under the provisions of Chapter VII of an act of said State, entitled "An to regulate the set-
70 tlement of the estates of deceased persons," approved May 1st, 1851, on the seventh day of January, 1856, between the hours of nine o'clock in the morning and the setting of the sun on that day, at

an auction room, which then was a public place in said city and county of San Francisco, where said premises are situated, at public auction sold the said portion of said lot in said second answer, above-described portion of said lot number ten.

That at said sale said Robinson was the highest and best bidder for a portion of said lot, including said part in said second answer described, and purchased the same for the sum of $225, which then and there was the fair value, and not in any way disproportionate to the value thereof, and which was then and there paid to the said administrator by said purchaser thereof as the purchase price thereof, which sale, by said administrator, after due notice, was afterwards and before the thirteenth day of February, 1856, by said probate court confirmed, and said administrator ordered by said court to make, execute, and deliver to
71 said purchaser a deed of conveyance of said premises.

That afterwards, on the said thirteenth day of February, 1856, the said Benjamin Aspinall, as such administrator, made, executed, and delivered to the said purchaser a deed of conveyance of said portion of said lot, and thereby granted, bargained, and sold and conveyed, and which purported to grant, bargain and sell and convey all the estate, right, title, and interest of said George Harlan at the time of his death in and to said part of said lot in said second answer above described to said Robinson.

That immediately after the said delivery of said deed, and more than fifteen years before the commencement of this suit, the said Robinson entered into the actual occupation and possession of said portion of said lot under said deed, claiming to own the same in fee under said deed from said Aspinall as such administrator, and by himself and his tenants has continuously thence hitherto held and possessed, and still holds and possesses, the same by himself and his tenants, and that said Murray and Taylor at the commencement of this suit occupied
72 said portion of said lot by the license and permission of said Robinson.

That more than fifteen years from the time of said sale, and from the said making and delivery of said deed, and from the entry as aforesaid of said Robinson, under and through the same upon said portion of said lot, and during a period of more than twelve years, while the administrations of said Aspinall and of Lucien B. Huff and Joel Harlan, respectively, were in full force, and while they were respectively acting as such administrators on said estate, have elapsed before the commencement of this suit.

That said Benjamin Aspinall continued to be and to act as such administrator until the eighth day of August, 1863. That said Joel Harlan and Lucien B. Huff were, by said probate court, duly appointed administrators of the estate of said George Harlan, deceased, on the 12th day May, 1864, and letters of administration thereupon issued to them on said estate; that they thereupon duly qualified, gave bonds as required by law, and entered on the discharge of their duties as such administrators and have since been such administrators,
73 and acting as such in the premises, until the year 1871.

And these defendants deny that they were at the time of the commencement of this suit in possession of any other portion of said lot number ten than that described in said second answer.

And said defendants, further answering, say that the title so acquired by said conveyance from said Aspinall as such administrator to said Robinson was and is ratified, confirmed, and made valid and sufficient in law to, and did transfer to said Robinson the title to the

portion of said lot number ten described in said second answer, under and by virtue of the provisions of an act of the legislature of said State, entitled "An act in relation to probate sales," approved April 2d, 1866.

Fifth. And for other and separate answer to said complaint, these defendants allege that heretofore, on the thirty-first day of May, A. D. 1859, said plaintiff commenced an action in the district court of the twelfth judicial district of this State, in and for the city and
74 county of San Francisco, against Jacob Hahn, John Dunn, John A. Riechert, Wm. Robinson, John Hagen, Edward C. Kirby, Catherine Matthews, Ja's Patterson, Walter Walsh, W. Burk, Charles Brown, Thos. Hasson, Mary Noonan, Jeremiah Noonan, Thomas J. Haynes, Thos. Gilroy, James McQuade, Louis Fillman, Henry B. Jones, Florence Crowley, Charles Moneypenny, Michael Barnes, Thomas B. Valentine, Samuel A. Morrison, George Torrens, John J. Hucks, Albion P. Bessey, Robert Olpherts, William Kelley, R. Merryman, Hamburg, P. Nihoof, John Smith, John Brown, John Doe, Richard Roe, Mary Smith, and Mary Brown, for the recovery of the possession of said lot number ten from said defendants therein.

That in the complaint in said action, said plaintiff alleged that he then was the owner of said lot number ten, and claimed the possession from said defendants therein by reason of said alleged ownership.

That said defendants severally answered said complaint, and by their said answers denied that plaintiff was the owner of said lot, or of any part thereof; and said defendant Robinson by his said
75 answer alleged that he was the owner of said subdivision number 33 in said second answer described.

That such proceedings were thereupon had in said suit; that afterwards, to wit, on the twelfth day of December, 1860, the said cause on the issues therein was tried by said court and a jury (by consent of parties) of six persons.

That thereupon, on motion of plaintiff, said cause was dismissed as to said defendants Robert Olpherts and William Kelley.

That after the introduction of evidence on the part of said plaintiff, the said jury found a verdict for said defendant' therein, which verdict was duly entered on the proper minutes and records of said court.

That thereupon it was by said court in said cause ordered, adjudged, and decreed that said plaintiff therein should take nothing by his said action against the said Jacob Hahn, John Dunn, John A. Reichert, William Robinson, John Hagan, Edward C. Kirby, Catherine Patterson (late Catherine Matthews), James Patterson, Walter Walsh, John Burke (sued as W. Burk), Charles Brown, Thomas Hasson, Jeremiah
76 Noonan, Thomas J. Haynes, Thomas Gilroy, James McQuade, Catherine McQuade, Louis Fillman, Henry B. Jones, Florence Crowley, Charles Moneypenny, Michael Barden (sued as Michael Barnes), Thomas B. Valentine, Samuel A. Morrison, George Torrens, John J. Hucks, Albion P. Bessey, Richard Merriman, Charles Hamburg, Patrick Keating, Thomas Clary, William Weir, Hugh Cowan, Levi B. Hester, John Dobson, William Fox, George Dougherty, and Thomas Costillo, but that said defendants should have and recover of and from plaintiff their costs; which judgment is still in full force.

That afterwards the said plaintiff appealed to the supreme court of said State from said judgment, and from the order of said court denying him a new trial therein; and that said supreme court, by its judgment and decision rendered in the August term of said supreme court, A. D. 1862, duly affirmed said judgment; and the remittitur affirming the same was duly filed in said district court on the sixteenth day of

October, 1862, as by the records andp roceedings in said cause in
77 said district court of the twelfth judicial district more fully appear.

That said defendants Murray and Taylor, at the commencement of this suit, occupied said subdivision 33 by the license and permission of said Robinson.

And these defendants deny that at the time of the commencement of this suit they, or either of them, were in possession of any portion of said lot number ten other than the part thereof which is described in said second answer.

Seventh. And for other and separate answer to said complaint these defendants allege that, on the 15th day of April, 1868, said plaintiff commenced a suit commonly called an action of ejectment in the district court of the fifteenth judicial district of the State of California, in and for the city and county of San Francisco, against Miller & Co., T. Miller, E. E. Kirby, John Pennyman, John Penniman, Mary Roe Conrad, John Shultz, John Schults, Thos. O'Brien, Thos. O'Brian, Harma Ward, Morris Michels, Margaret Burk, John Murphy, Mrs. Brown,
78 Mary Brown, John Doe Brown, H. Rosenbaum, John Cox, Robert Brown, John Brown, Angus Leslie, Mary Leslie, R. W. Roland, Amanda E. Whitford, Salvator Marcelini, Chas. Lawrence, John Williams, J. A. Caldwell, August Brandt, John Benson, John Maloney, Jacob Schmidt, D. Harris, John Burk, Patrick Burns, Bridget Borden, Henry Cheno, Mrs. S. Simpson, John Eyre, Martha Crump, Henry Peterson, James Hogan, James Hagan, Olphant, Oliphant, C. McQuade, Wm. Parker, John Cleary, Jane Quirk, Lewis Branig, Margaret Foley, August Bausch, Barnard O'Farrell, Michael Reynolds, Simon Rumley, Frederickson, Hans Smith, Champagne Charlie, Coal Oil Tommy, Patrick from Cork, Michael from Tipperary, John Doe, Richard Roe, John Doe, jr., Richard Roe, jr., John Doe 2d, Richard Roe 2d, John Doe 3d, and Richard Roe 3d, for the recovery of said one hundred vara lot number ten.

That said defendants are and were respectively the defendants in this action, or the grantors or tenants respectively of these defendants.

That in his complaint in said suit in said fifteenth district court
79 said plaintiff alleged that he was the owner in fee and entitled to the possession of said lot number ten.

That the defendants therein respectively answered said complaint, and respectively denied in their answers the alleged title and right of possession of said plaintiff therein to said lot, and respectively alleged ownership of the several portions thereof, claimed by each in themselves respectively, or their lessors.

That such proceedings were thereupon had in said fifteenth district court, that a trial of said action was had before the court without a jury (a jury having been by counsel of the parties, waived) on the 30th day of August, 1868, and on the said trial said plaintiff was nonsuited, and a judgment of nonsuit for said defendants therein was entered on the 2d day of September, 1868, in the said court.

That afterwards, in due time, on the 20th day of September, 1870, an appeal was taken in said cause by said plaintiff from said judgment of nonsuit of said district court to the supreme court of the State
80 of California, the transcript in said appeal being duly prepared and filed in said supreme court, and that said cause and said appeal was, at the time of the commencement of this suit, and still is pending in said supreme court in no way affirmed, reversed, or decided.

Wherefore these defendants pray for judgment, that the said alleged

claim of plaintiff to said lot may be adjudged to be wholly void as against these defendants.

That said defendant Robinson be decreed to be the owner, and entitled to the possession of said part of said lot, which is described in said second answer.

That the plaintiff and his grantees and assigns be forever enjoined by the order of this court from claiming or pretending to claim, and from bringing suit for, the said portion of said lot, and that defendants have judgment for their costs of this suit.

A. CAMPBELL AND
CHAS. N. FOX,
Attorneys for said Defendants.

81 (Endorsed:)

Service of a copy of the within answer hereby admitted this first day of April, A. D. 1873.

WM. H. PATTERSON,
Attorney for Plaintiff.

Filed April 1st, A. D. 1873.

L. S. B. SAWYER, *Clerk*,
By J. F. O'BEIRNE, *Deputy Clerk.*

82 *Answer of A. McQuade and Cath'e McQuade.*

In the circuit court of the United States in and for the district of California.

WILLIAM NEWTON MEEKS, PLAINTIFF,
vs.
FERDINAND VASSAULT, MAURICE DORE, AND others, defendants.

First. Anthony McQuade and Catherine McQuade, two of the defendants in this suit, for answer to the complaint of said plaintiff therein, deny each and every allegation, statement, matter, and thing in said complaint contained.

Second. And for other and separate answer to said complaint these defendants state that before the commencement of this suit James McQuade, now deceased, in his lifetime and at the time of his death, was the owner in fee of that portion of said one hundred vara lot number ten in the complaint named, which is described as follows: Being
83 subdivisions numbers 49 and 50 of said lot, commencing at a point on the northwesterly line of Minna street, distant 275 feet northeasterly from the northeasterly line of Third street; thence running northeasterly along said line of Minna street 46 feet; thence at right angles northwesterly 80 feet; thence at right angles southwesterly 46 feet, and thence at right angles southeasterly 80 feet, to the point of commencement.

That said James McQuade died on or about the 19th of January, 1863, out of this State, intesta'e, then being the owner of said subdivisions 49 and 50 of said lot; that such proceedings were thereafter had that on the 3d day of January, 1864, letters of administration upon his estate were duly issued by the probate court of said city and county to said Anthony McQuade, who duly qualified as such administrator, and thereupon became and still is such administrator. And that these defend-

ants, at the time of the commencement of this suit, were not and are not now in the possession or occupation of any other portion of said lot number ten.

84 That said Anthony, at the time of the commencement of this suit, by himself as such administrator, and his tenant, said Catherine, occupied said subdivisions of said lot, to wit, the said Catherine by the license and permission of said Anthony, as such administrator.

Third. And for other and separate answer to said complaint these defendants say that neither said plaintiff, nor his ancestors, predecessors, or grantors, or any of them, have been seized or possessed of any part of that portion of said lot number ten which is particularly in said second answer and defence above described within fifteen years next before the commencement of this suit; that no entry, peaceable or otherwise, has been made in said portion of said lot within said fifteen years next before the commencement of this suit, by plaintiff, or by his ancestors, predecessors, or grantors, or any of them, or by any person through whom they or either of them claim or have claimed title or right of possession of said lot. And these defendants aver that said portion

85 of said lot in said second answer above described has been continuously held and possessed and occupied adversely to all title or claim of title of or in said plaintiff, or his ancestors, predecessors, or grantors, or those through whom any of them claim title or right of possession in the premises, by said James McQuade until his death, on 19th January, 1863, and by his duly qualified administrator, said Anthony, since his death, by himself and his tenants thereof for more than fifteen years next before and at the time of the commencement of this suit.

That said James McQuade, more than fifteen years before the commencement of this suit, entered into the actual possession and occupation of said portion of said lot in said second answer described under a claim of title, and not otherwise, and founded such claim of title upon a written instrument and deed of said portion of said lot, and that there has been continued adverse occupation and possession of said portion of said lot so included in such deed under said claim for more than

86 five years next before the commencement of this suit in and by said James McQuade and said Anthony, as his duly qualified administrator, respectively, and their tenants, and that such possession still continues in said Anthony McQuade, as such administrator, and his said tenant, Catherine, to wit, the said Catherine by the license and permission of said Anthony, as such administrator, and that said portion of said lot so held in such adverse possession and occupation has been usually and continuously improved during all of said fifteen years, and that defendants were not, at the time of the commencement of this suit, in the occupation and possession of any other part of said lot.

Fourth. And for other and separate answer to said complaint these defendants allege that George Harlan was, at the time of his death, the owner in fee of said lot numbered ten; that he died intestate on or about the eighth day of July, 1850, at the county of Santa Clara, of which he was then a resident; that the probate court of said county of Santa Clara had jurisdiction in the premises; that said probate court after

87 due and legal notice, on the fifteenth day of June, 1855, appointed Benjamin Aspinall administrator of the estate of said George Harlan, deceased; that letters of administration on said estate were duly issued to said Aspinall, who then and there duly qualified as such administrator, gave the bond required by law in the premises,

became and was the lawful and acting administrator of and on said estate.

That afterwards, and while said Aspinall was so qualified and acting as such administrator, and after he had on the twenty-fifth day of August, 1855, presented his petition as such to said probate court, praying for an order and authority to sell the real estate of said estate, including said lot numbered ten, and after said court had on the tenth day of November, 1855, duly made an order authorizing, empowering, and directing said Aspinall as such administrator to sell said real estate, and after posting and publishing notice of the time and place of such sale, and giving bond as required by law, the said Benjamin Aspinall, as such administrator, and acting as such under the provisions of chapter VII of an act of said State entitled "An act to regulate the settlement
88 of the estates of deceased persons," approved May 1, 1851, on the seventh day of January, 1856, between the hours of nine o'clock in the morning, and the setting of the sun on that day, at an auction-room, which then was a public place in said city and county of San Francisco, where said premises are situated, at public auction, sold the said portion of said lot in said second answer above described, portion of said lot number ten.

That at said sale, said James McQuade was the highest and best bidder for a portion of said lot, including said part in said second answer described, and purchased the same for the sum of $365, which then and there was the fair value, and not in any way disproportionate to the value thereof, and which was then and there paid to the said administrator by said purchaser thereof as the purchase price thereof; which sale by said administrator after due notice was afterwards and before the thirteenth day of February, 1856, by said probate court confirmed, and said administrator ordered by said court to make, execute, and deliver to said purchaser a deed of conveyance of said premises.

89 That afterwards, on the said thirteenth day of February, 1856, the said Benjamin Aspinall, as such administrator, made, executed, and delivered to the said purchaser a deed of conveyance of said portion of said lot, and thereby granted, bargained, and sold and conveyed, and which purported to grant, bargain, and sell and convey, all the estate, right, title, and interest of said George Harlan at the time of his death in and to said part of said lot in said second answer above described to said James McQuade; that said James McQuade died out of said State intestate, on the nineteenth day of January, 1863, then being still the owner of said subdivisions 49 and 50, in said second answer described; that on the 3d day of January, 1864, letters of administration on his estate were duly issued by the probate court of said city and county to said Anthony McQuade, who then qualified, became, and still is administrator of his estate; that at the time of the commencement of this suit said Anthony, as such administrator, occupied and held said subdivisions 49 and 50, by himself and his tenant said Catherine, to wit, said Catherine by the license and permission of said Anthony as such administrator.

90 That immediately after the said delivery of said deed and more than fifteen years before the commencement of this suit, the said James McQuade entered into the actual occupation and possession of said portion of said lot under said deed, claiming to own the same in fee under said deed from said Aspinall as such administrator, and by himself and his tenants has continuously thence hitherto held and possessed the same until his said death, and that his said administrator from and ever since

the death of said James has held and occupied and still holds and possesses the same by himself as such administrator and his tenants.

That more than fifteen years from the time of said sale, and from the said making and delivery of said deed, and from the entry as aforesaid of said James McQuade under and through the same upon said portion of said lot, and during a period of more than twelve years, while the administrations of said Aspinall and of Lucien B. Huff and Joel Harlan respectively were in full force, and while they were respectively acting as such administrators on said estate, have elapsed before the commencement of this suit.

91 That said Benjamin Aspinall continued to be and to act as such administrator until the eighth day of August, 1863. That said Joel Harlan and Lucien B. Huff were, by said probate court, duly appointed administrators of the estate of said George Harlan, deceased, on the twelfth day of May, 1864, and letters of administration thereupon issued to them on said estate. That they thereupon duly qualified, gave bonds as required by law, and entered on the discharge of their duties as such administrators, and have since been such administrators and acting as such in the premises until the year 1871.

And these defendants deny that they were at the time of the commencement of this suit in possession of any other portion of said lot number ten than that described in said second answer.

And said defendants, further answering, say that the title so acquired by said conveyance from said Aspinall, as such administrator, to said James McQuade, was and is ratified, confirmed, and made valid and sufficient in law to, and did transfer to said James McQuade the title

92 to the portion of said lot number ten described in said second answer, under and by virtue of the provisions of an act of the legislature of said State, entitled "An act in relation to probate sales," approved April 2d, 1866.

Fifth. And for other and separate answer to said complaint, these defendants allege that heretofore, on the thirty-first day of May, A. D. 1859, said plaintiff commenced an action in the district court of the twelfth judicial district of this State, in and for the city and county of San Francisco, against Jacob Hahn, John Dunn, John A. Riechert, Wm. Robinson, John Hagen, Edward C. Kirby, Catherine Matthews, Jas. Patterson, Walter Walsh, W. Burk, Charles Brown, Thos. Hasson, Mary Noonan, Jeremiah Noonan, Thomas J. Haynes, Thos. Gilroy, James McQuade, Louis Fillman, Henry B. Jones, Florence Crowley, Charles Moneypenny, Michael Barnes, Thomas B. Valentine, Samuel A. Morrison, George Torrens, John J. Hucks, Albion P. Bissey, Robert Olpherts, William Kelley, R. Merryman, Hamburg, P. Nihoof, John Smith, John Brown, John Doe, Richard Roe, Mary Smith, and

93 Mary Brown, for the recovery of the possession of said lot number ten from said defendants therein.

That in the complaint in said action said plaintiff alleged that he then was the owner of said lot number ten, and claimed the possession from said defendants therein by reason of said alleged ownership.

That said defendants severally answered said complaint, and by their said answers denied that plaintiff was the owner of said lot, or of any part thereof; and said defendant James McQuade, by his said answer, alleged that he was the owner of said subdivisions, numbers 49 and 50, in said second answer described.

That such proceedings were thereupon had in said suit that afterwards, to wit, on the twelfth day of December, 1860, the said cause, on

the issues therein, was tried by said court and a jury (by consent of parties) of six persons.

That thereupon, on motion of plaintiff, said cause was dismissed as to said defendants Robert Olpherts and William Kelley.

That after the introduction of evidence on the part of said plain-
94 tiff the jury found a verdict for said defendants and for said James McQuade therein, which verdict was duly entered in the proper minutes and records of said court.

That thereupon it was by said court in said cause ordered, adjudged, and decreed that said plaintiff therein should take nothing by his said action against the said Jacob Hahn, John Dunn, John A. Reichert, William Robinson, John Hagan, Edward C. Kirby, Catharine Patterson (late Catharine Matthews), James Patterson, Walter Walsh, John Burke (sued as W. Burk), Charles Brown, Thomas Hassan, Jeremiah Noonan, Thomas J. Haynes, Thomas Gilroy, James McQuade, Catharine McQuade, Louis Fillman, Henry B. Jones, Florence Crowley, Charles Moneypenny, Michael Barden (sued as Michael Barnes), Thomas B. Valentine, Samuel A. Morrison, George Torrens, John J. Hucks Albion P. Bessey, Richard Merriman, Charles Hamburg, Patrick Keating, Thomas Clary, William Weir, Hugh Cowan, Levi B. Kester, John Dobson, William Fox, George Dougherty, and Thomas Castillo, but that said defendants should have and recover of and from plaintiff their costs; which judgment is still in full force.

95 That afterwards the said plaintiff appealed to the supreme court of said State from said judgment, and from the order of said court denying him a new trial therein, and that said supreme court, by its judgment and decision rendered in the August term of said supreme court, A. D. 1862, duly affirmed said judgment, and the remittitur affirming the same was duly filed in said district court on the sixteenth day of October, 1862, as by the records and proceedings in said cause in said district court of the twelfth judicial district more fully appear.

That said James McQuade died on the 19th day of January, 1863, in the occupation and possession of said subdivisions numbers 49 and 50, in said second answer described; that letters of administration on his estate were, on the 3d day of January, 1864, duly issued out of the probate court of said city and county to said Anthony McQuade, who duly qualified and acted as, and still is, such administrator, and at the time of the commencement of this suit held and occupied all of said
96 subdivisions numbers 49 and 50 by himself, as such administrator, and by his tenant, said Catharine, to wit: said Catherine, by the license and permission of said Anthony as such administrator.

And these defendants deny that they, or either of them, at the time of the commencement of this suit, were in possession of any portion of said lot number ten, other than the part thereof which is described in said second answer.

Seventh. And for other and separate answer to said complaint, these defendants allege that on the 15th day of April, 1868, said plaintiff commenced a suit, commonly called an action of ejectment, in the district court of the fifteenth judicial district of the State of California, in and for the city and county of San Francisco, against Miller & Co., T. Miller, E. C. Kirby, John Pennyman, John Penniman, Mary Roe Conrad, John Shultz, John Schults, Thos. O'Brien, Thos. O'Brian, Hanna Ward, Morris Michels, Margaret Burk, John Murphy, Mrs. Brown, Mary Brown, John Doe Brown, H. Rosenbaum, Jane Cox, Robert Brown, John Brown, Angus Leslie, Mary Leslie, R. W. Roland,

97 Amanda E. Whitford, Salvator Marcelini, Chas. Laurence, John Williams, J. A. Caldwell, August Brandt, John Benson, John Maloney, Jacob Schmidt, D. Harris, John Burk, Patrick Burns, Bridget Bardon, Henry Cheno, Mrs. S. Simpson, John Eyre, Martha Crump, Henry Peterson, James Hogan, James Hagan, Oliphant, Oliphant, C. McQuade, Wm. Parker, John Cleary, Jane Quirk, Lewis Branig, Margaret Foley, August Bausch, Barnard O'Farrell, Michael Reynolds, Simon Rumley, Frederickson, Hans Smith, Champagne Charlie, Coal-oil Tommy, Patrick from Cork, Michael from Tipperary, John Doe, Richard Roe, John Doe, jr., Richard Roe, jr., John Doe 2d, Richard Roe 2d, John Doe 3d, and Richard Roe 3d, for the recovery of said one-hundred-vara lot, numbered ten.

That said defendants are and were respectively the defendants in this action, or the grantors or tenants respectively of these defendants.

That in his complaint in said suit in said fifteenth district court, said plaintiff alleged that he was the owner in fee, and entitled to the possession of said lot number ten.

That the defendants therein respectively answered said com-
98 plaint, and respectively denied in their answers the alleged title and right of possession of said plaintiff therein to said lot, and respectively alleged ownership of the several portions thereof, claimed by each, in themselves respectively, or their lessors.

That such proceedings were thereupon had in said fifteenth district court that a trial of said action was had before the court without a jury (a jury having been, by counsel of the parties, waived) on the 30th day of August, 1868, and on the said trial said plaintiff was non-suited, and a judgment of non-suit for said defendants therein was entered on the 2d day of September, 1868, in the said court.

That afterwards, in due time, on the 20th day of September, 1870, an appeal was taken in said cause, by said plaintiff, from said judgment of non-suit of said district court to the supreme court of the State of California, the transcript on said appeal being duly prepared and filed in said supreme court, and that said cause and said appeal was at the
99 time of the commencement of this suit and still is pending in said supreme court, in no way affirmed, reversed, or decided.

Wherefore these defendants pray for judgment that the said alleged claim of plaintiff to said lot may be adjudged to be wholly void as against these defendants.

That said defendant, Anthony McQuade, as such administrator, be decreed to be the owner, and entitled to the possession of said part of said lot which is described in said second answer.

That plaintiff, and his grantees and assigns, be forever enjoined by the order of this court from claiming, or pretending to claim, and from bringing suit for the said portion of said lot; and that defendants have judgment for their costs of this suit.

A. CAMPBELL AND
CHAS. S. FOX,
Attorneys for said Defendants.

(Endorsed:)

100 Service of a copy of the within answer hereby admitted this first day of April, A. D. 1873.

WM. H. PATTERSON,
Attorney for Plaintiff.

Filed 1st April, A. D. 1873.

L. S. B. SAWYER, *Clerk*,
By J. F. O'BEIRNE,
Deputy Clerk.

101 *Answer of Henry Schoenan and Chas. Brown.*

In the circuit court of the United States in and for the district of California.

WILLIAM NEWTON MEEKS, PLAINTIFF,
vs.
FERDINAND VASSAULT, MAURICE DORE, AND others, defendants.

First. Henry Schoenan and Charles Brown, two of the defendants in this suit, for answer to the complaint of said plaintiff therein, deny each and every allegation, statement, matter, and thing in said complaint contained.

Second. And for other and separate answer to said complaint, these defendants state that before and at the time of the commencement of this suit said Henry Schoenan was and has ever since been and still is the owner in fee of that portion of said one hundred vara lot number ten in complaint named, which is described as follows: Being subdivision number fifty-six (56) of said lot, commencing at a point on the southeasterly line of Minna street distant three hundred and
102 ninety-one feet four and one-half inches (391 4½) northeasterly from the northeasterly line of Third street; thence northeasterly on said line of Minna street thirty feet four and one-half inches (30 4½); thence at right angles southeasterly seventy (70) feet; thence at right angles southwesterly thirty feet four and one-half inches (30 4½); and thence at right angles northwesterly seventy (70) feet to the point of commencement.

And that these defendants, at the time of the commencement of this suit, had not and have not now the possession or occupation of any other portion of said lot number ten. And that said Schoenan, at the time of the commencement of this suit, occupied said portion of said lot by himself and his tenant, said Brown, to wit, said Brown by the license and permission of said Schoenan.

Third. And for other and separate answer to said complaint these defendants say that neither said plaintiff nor his ancestors or grantors, or any of them, have been seized or possessed of any part of that portion of said lot number ten which is particularly in said second answer
103 and defence above described, within fifteen years next before the commencement of this suit; that no entry, peaceable or otherwise, has been made on said portion of said lot within said fifteen years next before the commencement of this suit by plaintiff or by his ancestors, predecessors, or grantors, or any of them, or by any person through whom they, or either of them, claim or have claimed title or right of possession of said lot.

And these defendants aver that said portion of said lot in said second answer above described has been continuously held and possessed and occupied adversely to all title or claim of title of or in said plaintiff or his ancestors, predecessors, or grantors, or those through whom any of them claim title or right of possession in the premises by said Henry Schoenan, who is the owner thereof, by himself and his tenants thereof, for more than fifteen years next before and at the time of the commencement of this suit.

That the grantors of said Henry Schoenan, more than fifteen years before the commencement of this suit, entered into the actual posses-

sion and occupation of said portion of said lot in said second an-
104 swer described, under a claim of title, and not otherwise, and founded such claim of title upon a written instrument and deed of said portion of said lot; and that there has been continued adverse occupation and possession of said portion of said lot so included in such deed under said claim for more than fifteen years next before the commencement of this suit in and by said Schoenan, by himself and his tenants, and that such possession still continues in them; and that said portion of said lot so held in such adverse possession and occupation has been usually and continuously improved during all of said fifteen years; and that defendants were not at the time of the commencement of this suit in the occupation or possession of any other part of said lot.

Fourth. And for other and separate answer to said complaint, these defendants allege that George Harlan was at the time of his death the owner in fee of the said lot number ten. That he died intestate on or about the eighth day of July, 1850, at the county of Santa Clara, of which he was then a resident. That the probate court of said county of
105 Santa Clara had jurisdiction in the premises.

That said probate court, after due and legal notice, on the fifteenth day of June, 1855, appointed Benjamin Aspinall administrator of the estate of said George Harlan, deceased. That letters of administration on said estate were duly issued to said Aspinall, who then and there duly qualified as such administrator, gave the bond required by law in the premises, became and was the lawful and acting administrator of and on said estate.

That afterwards, and while said Aspinall was so qualified and acting as such administrator, and after he had on the twenty-fifth day of August, 1855, presented his petition as such to said probate court, praying for an order and authority to sell the real estate of said estate, including said lot number ten, and after said court had, on the tenth day of November, 1855, duly made an order authorizing, empowering and directing said Aspinall as such administrator to sell said real estate, and after posting and publishing notice of the time and place of such sale, and giving bond as required by law, the said Benjamin Aspinall, as such administrator, and acting as such under the provisions of
106 chapter VII of an act of said State, entitled "An act to regulate the settlement of the estates of deceased persons," approved May 1, 1851, on the seventh day of January, 1856, between the hours of nine o'clock in the morning and the setting of the sun on that day, at an auction room, which then was a public place in said city and county of San Francisco, where said premises are situated, at public auction, sold the said portion of said lot in said second answer above described, portion of said lot number ten. That at said sale, Charles R. Thayer was the highest and best bidder for a portion of said lot, including said part in said second answer described, and purchased the same for the sum of $390, which then and there was the fair value, and not in any way disproportionate to the value thereof, and which was then and there paid to the said administrator by said purchaser thereof, as the purchase price thereof; which sale by said administrator, after due notice, was afterwards, and before the thirteenth day of February, 1856, by said probate court confirmed, and said administrator ordered by said
107 court to make, execute and deliver to said purchaser a deed of conveyance of said premises.

That afterwards, on the said thirteenth day of February, 1856, the said Benjamin Aspinall, as such administrator, made, executed and delivered to the said purchaser a deed of conveyance of said portion of

said lot, and thereby granted, bargained and sold and conveyed, and which purported to grant, bargain and sell and convey, all the estate, right, title and interest of said George Harlan, at the time of his death, in and to said part of said lot in said second answer above described to said Charles R. Thayer.

That on the 21st day of June, 1859, said Harry Schoenan became by divers mesne conveyances from said Thayer the owner in fee of the land in said second answer described, and of all the right, title, interest and estate of said Charles R. Thayer. That immediately after the said delivery of said deed to said Thayer, and more than fifteen years before the commencement of this suit, the said Charles R. Thayer entered into
the actual occupation and possession of said portion of said lot
108 under said deed, claiming to own the same in fee under said deed from said Aspinall as such administrator, and by himself and his tenants has continuously thence hitherto held and possessed the same until the title thereto became vested in said defendant, Henry Schoenan, as aforesaid, who since then by himself and his tenants has held and possessed and still holds and possesses the same by himself and his tenant, Brown, as aforesaid, and that said Shoenan and Brown at the commencement of this suit occupied said portion of said lot, to wit, said Brown by the license and permission of said Schoenan.

That more than fifteen years from the time of said sale, and from the said making and delivery of said deed, and from the entry as aforesaid of said Thayer under and through the same upon said portion of said lot, and during a period of more than twelve years, while the administrations of said Aspinall and of Lucien B. Huff and Joel Harlan, respectively, were in full force, and while they were respectively acting
as such administrators on said estate, have elapsed before the
109 commencement of this suit.

That said Benjamin Aspinall continued to be and to act as such administrator until the eighth day of August, 1863; that said Joel Harlan and Lucien B. Huff were, by said probate court, duly appointed administrators of the estate of said George Harlan, deceased, on the twelfth day of May, 1864, and letters of administration thereupon issued to them on said estate; that they thereupon duly qualified, gave bonds as required by law, and entered on the discharge of their duties as such administrators, and have since been such administrators, and acting as such in the premises, until the year 1871.

And these defendants deny that they were at the time of the commencement of this suit in possession of any other portion of said lot number ten than that described in said second answer.

And said defendants, further answering, say that the title so acquired by said conveyance from said Aspinall, as such administrator, to said Thayer, was and is ratified, confirmed, and made valid and sufficient in law to and did transfer to said Thayer and to said Schoenan the title to
the portion of said lot number ten described in said second an-
110 swer, under and by virtue of the provisions of an act of the legislature of said State, entitled "An act in relation to probate sales," approved April 2d, 1866.

That said defendant Schoenan at the commencement of this suit occupied said subdivision number 56, by himself and his tenant, said Brown, to wit, said Brown by the license and permission of said Schoenan.

And these defendants deny that they, or either of them, at the time of the commencement of this suit were in possession of any portion of

said lot number ten, other than the part thereof which is described in said second answer.

Seventh. And for other and separate answer to said complaint, these defendants allege that on the 15th day of April, 1868, said plaintiff commenced a suit, commonly called an action of ejectment, in the district court of the fifteenth judicial district of the State of California, in and for the city and county of San Francisco, against Miller & Co., T. Miller, E. C. Kirby, John Pennyman, John Penniman, Mary Roe
111 Conrad, John Shultz, John Shults, Thos. O'Brien, Thos. O'Brian, Hanna Ward, Morris Michels, Margaret Burk, John Murphy, Mrs. Brown, Mary Brown, John Doe Brown, H. Rosenbaum, Jane Cox, Robert Brown, John Brown, Angus Leslie, Mary Leslie, R. W. Roland, Amanda E. Whitford, Salvator Marcelini, Chas. Laurence, John Williams, J. A. Caldwell, August Brandt, John Benson, John Maloney, Jacob Schmidt, D. Harris, John Burk, Patrick Burns, Bridget Bardon, Henry Cheno, Mrs. S. Simpson, John Eyre, Martha Crump, Henry Peterson, James Hogan, James Hagan, Oliphant, Oliphant, C. McQuade, Wm. Parker, John Cleary, Jane Quirk, Lewis Branig, Margaret Foley, August Bausch, Barnard O'Farrell, Michael Reynolds, Simon Rumley, Frederickson, Hans Smith, Champagne Charlie, Coal Oil Tommy, Patrick from Cork, Michael from Tipperary, John Doe, Richard Roe, John Doe, jr., Richard Roe, jr., John Doe 2d, Richard Roe 2d, John Doe 3d, and Richard Roe 3d, for the recovery of said one hundred vara lot number ten. That said defendants are and were respectively the defendants in this action, or the grantors or tenants respectively of these defendants; that, in his complaint in
112 said suit in said fifteenth district court, said plaintiff alleged that he was the owner in fee and entitled to the possession of said lot number ten; that the defendants therein respectively answered said complaint, and respectively denied in their answers the alleged title and right of possession of said plaintiff therein to said lot, and respectively alleged ownership of the several portions thereof claimed by each, in themselves respectively, or their lessors.

That such proceedings were thereupon had in said fifteenth district court that a trial of said action was had before the court without a jury (a jury having been by counsel of the parties waived), on the 30th day of August, 1868, and on the said trial said plaintiff was non-suited, and a judgment of non-suit for said defendants therein was entered on the 2d day of September, 1868, in the said court.

That, afterwards, in due time, on the 20th day of September, 1870, an appeal was taken in said cause by said plaintiff from said judgment of non-suit of said district court to the supreme court of the State
113 of California, the transcript on said appeal being duly prepared and filed in said supreme court, and that said cause and said appeal was at the time of the commencement of this suit, and still is, pending in said supreme court, in no way affirmed, reversed, or decided.

Wherefore these defendants pray for judgment that the said alleged claim of plaintiff to said lot may be adjudged to be wholly void as against these defendants.

That said defendant Schoenan be decreed to be the owner and entitled to the possession of said part of said lot which is described in said second answer.

That the plaintiff and his grantees and assigns be forever enjoined by the order of the court from claiming or pretending to claim, and

from bringing suit for the said portion of said lot; and that defendants have judgment for their costs of this suit.

A. CAMPBELL AND
CHA'S N. FOX,
Attorneys for said Defendants.

114 (Endorsed:)

Service of a copy of the within answer hereby admitted this first day of April, A. D. 1873.

WM. H. PATTERSON,
Attorney for Plaintiff.

Filed 1st April, A. D. 1873.

L. S. B. SAWYER, *Clerk*,
By J. F. O'BEIRNE,
Dep. Clk.

115 *Answer of Frank Lawlor and others.*

In the circuit court of the United States in and for the district of California.

WILLIAM NEWTON MEEKS, PLAINTIFF,
vs.
FERDINAND BASSAULT, MAURICE DORE, AND others, defendants.

First. Frank Lawlor, Thomas Kain, Leals Bool, and Margaret Dunn, four of the defendants in this suit, for answer to the complaint of said plaintiff, therein deny each and every allegation, statement, matter, and thing in said complaint contained.

Second. And for other and separate answer to said complaint, these defendants state, that before the commencement of this suit, John Dunn, deceased, in his lifetime and at the time of his death, was the owner in fee of those portions of said one hundred vara lot number ten, in complaint named, which is described as follows:

First. Being subdivision number 45 of said lot, commencing at
116 a point on the northwesterly line of Minna street distant 396 feet northeasterly from the northeasterly line of Third street; thence, northeasterly on said line of Minna street, 25 feet; thence, at right angles, northwesterly 80 feet; thence, at right angles, southwesterly 25 feet, and thence, at right angles, southeasterly 80 feet, to the point of commencement.

Second. Being subdivision number 59 and portion of subdivision number 60 of said lot: Commencing at a point in the southeasterly line of Minna street distant 311 feet northeasterly from the northeasterly line of Third street; thence, running northeasterly along said line of Minna street 20 feet; thence, at right angles, southeasterly 70 feet; thence, at right angles, southwesterly 20 feet; and thence, at right angles, northwesterly 70 feet, to the point of commencement.

That said John Dunn died in the month of May, 1871, at said city and county of San Francisco, leaving a last will, then being the owner of said property above described; that such proceedings were thereupon and thereafter had that on the 15 June, 1871, letters testamentary on his estate were issued by the probate court of said city
117 and county to Laurence Dunn and William Dunn, who duly qual-

ified thereunder, and thereupon became and still are executors of said will; and that these defendants, at the time of the commencement of this suit, were not, and are not now, in the possession or occupation of any other portion of said lot number ten.

And that said four defendants above named, at the time of the commencement of this suit, occupied said portions of said lot above described, by the license and permission of said Laurence Dunn and William Dunn, as such executors.

Third. And for other and separate answer to said complaint, these defendants say that neither said plaintiff nor his ancestors, predecessors, or grantors, or any of them, have been seized or possessed of any part of that portion of said lot number ten which is particularly in said second answer and defence above described, within fifteen years next before the commencement of this suit; that no entry, peaceable or otherwise, has been made on said portion of said lot within said fifteen years next before the commencement of this suit by plaintiff, or by his
118 ancestors, predecessors, or grantors, or any of them, or by any person through whom they, or either of them, claim or have claimed title or right of possession of said lot. And these defendants aver that said portion of said lot in said second answer above described has been continuously held and possessed and occupied adversely to all title or claim of title of or in said plaintiff, or his ancestors, predecessors, or grantors, or those through whom any of them claim title or right of possession in the premises, by the grantors of and by said John Dunn, until his death as aforesaid, and by said executors of his said will since his death, by themselves and their tenants thereof, for more than fifteen years next before and at the time of the commencement of this suit.

That said grantors of said John Dunn and said John Dunn, more than fifteen years before the commencement of this suit, entered into the actual possession and occupation of said portion of said lot in said second answer described, under a claim of title, and not otherwise, and founded such claim of title upon a written instrument and deed of said portion of said lot, and that there has been continued adverse
119 occupation and possession of said portion of said lot so included in such deed under said claim for more than fifteen years next before the commencement of this suit in and by said John Dunn, and his grantors and their tenants, and that such possession still continues in said Laurence Dunn and William Dunn, as such executors, and their said tenants, to wit: the said Lawlor, Kain, Bool, and Margaret Dunn, by the license and permission of said executors, Laurence and William Dunn; and that said portion of said lot so held in such adverse possession and occupation has been usually and continuously improved during all of said fifteen years, and that defendants were not at the time of the commencement of this suit in the occupation or possession of any other part of said lot.

Fourth. And for other and separate answer to said complaint, these defendants allege that George Harlan was, at the time of his death, the owner in fee of the said lot number ten; that he died intestate on or about the eighth day of July, 1850, at the county of Santa Clara, of which he was then a resident; that the probate court of said
120 county of Santa Clara had jurisdiction in the premises.

That said probate court, after due and legal notice, on the fifteenth day of June, 1855, appointed Benjamin Aspinall administrator of the estate of said George Harlan, deceased; that letters of administration on said estate were duly issued to said Aspinall, who then and there duly qualified as such administrator, gave the bond required by

law in the premises, became and was the lawful and acting administrator of and on said estate.

That afterwards, and while said Aspinall was so qualified and acting as such administrator, and after he had on the twenty-fifth day of August, 1855, presented his petition as such to said probate court, praying for an order and authority to sell the real estate of said estate, including said lot number ten, and after said court had, on the tenth day of November, 1855, duly made an order authorizing, empowering, and directing said Aspinall, as such administrator, to sell said real estate, and after posting and publishing notice of the time and place of such sale, and giving bond as required by law, the said Benjamin As-
121 pinall, as such administrator, and acting as such under the provisions of chapter VII of an act of said State, entitled "An act to regulate the settlement of the estates of deceased persons," approved May 1st, 1851, on the seventh day of January, 1856, between the hours of nine o'clock in the morning and the setting of the sun on that day, at an auction-room, which then was a public place in said city and county of San Francisco, where said premises are situated, at public auction, sold the said portion of said lot in said second answer above described, portion of said lot number ten.

That at said sale, Robert Olpherts, and Wm. Kelly, and C. M. Brosman, and R. V. Groot were the highest and best bidders for portions of said lot, including said parts in said second answer described, and purchased the same for the sum of $595, which then and there was the fair value, and not in any way disproportionate to the value thereof, and which was then and there paid to the said administrator by said purchasers thereof, as the purchase price thereof, which sale by said administrator, after due notice, was afterwards, and before the thirteenth day of February, 1856, by said probate court confirmed, and said ad-
122 ministrator ordered by said court to make, execute and deliver to said purchasers deeds of conveyance of said premises.

That afterwards, on the said thirteenth day of February, 1856, the said Benjamin Aspinall, as such administrator, made, executed and delivered to the said purchasers deeds of conveyance of said portions of said lot, and thereby granted, bargained, and sold and conveyed, and which purported to grant, bargain, and sell and convey all the estate, right, title, and interest of said George Harlan, at the time of his death, in and to said parts of said lot in said second answer above described, to wit: said subdivision number 45 to said Brosman and Groot, who, on the 27th day of June, 1856, sold and by deed conveyed the same to said John Dunn, and to said Olpherts and Kelly, said piece of land secondly in said second answer described, which last mentioned parcel, by deeds and mesne conveyances before the commencement of this suit, became vested in said John Dunn.

That on the 15th of June, 1871, letters testamentary on the estate of said John Dunn, who died in the month of May previous, were duly issued by the probate court of said city and county to said Lawrence Dunn and William Dunn, who then qualified, became and still
123 are executors of said will of said John Dunn.

That at the time of the commencement of this suit said defendants, Lawlor, Kain, Bool, and Margaret Dunn, occupied said portions of said lot in said second answer described, by the license and permission of said Lawrence Dunn and William Dunn as such executors.

That immediately after the said delivery of said deeds, and more than fifteen years before the commencement of this suit, the said Olpherts, and Kelly, and Brosman, and Groot, as aforesaid, entered into the ac-

tual occupation and possession of said portions of said lot under said deeds, claiming to own the same in fee under said deeds from said Aspinall as such administrator, and by themselves and their tenants has continuously thence hitherto held and possessed the same as aforesaid, until the same became vested as aforesaid in said John Dunn, who thenceforth until his said death held and possessed the same, and that the said executors of his will have ever since his said death held and possessed, and still hold and possess, the same by themselves as such executors and by their tenants. That more than fifteen years from the time of said sale, and from the said making and delivery of said deeds, and from the entry as aforesaid of said Olpherts, and Kelly, and
124 Brosman, and Groot, under and through the same upon said portion of said lot, and during a period of more than twelve years, while the administrations of said Aspinall and of Lucien B. Huff and Joel Harlan, respectively, were in full force, and while they were respectively acting as such administrators on said estate, have elapsed before the commencement of this suit.

That said Benjamin Aspinall continued to be and to act as such administrator until the eighth day of August, 1863. That said Joel Harlan and Lucien B. Huff were by said probate court duly appointed administrators of the estate of said George Harlan, deceased, on the twelfth day of May, 1864, and letters of administration thereupon issued to them on said estate. That they thereupon duly qualified, gave bonds as required by law, and entered on the discharge of their duties as such administrators, and have since been such administrators and acting as such in the premises, until the year 1871.

And these defendants deny that they were at the time of the commencement of this suit in possession of any other portion of said lot number ten than that described in said second answer.

125 And said defendants further answering say that the title so acquired by said conveyances from said Aspinall as such administrator to said Olpherts and Kelly and Brosman and Groot was and is ratified, confirmed, and made valid and sufficient in law to, and did transfer to them and to said John Dunn the title to the portion of said lot number ten, described in said second answer, under and by virtue of the provisions of an act of the legislature of said State, entitled "An act in relation to probate sales," approved April 2d, 1866.

Fifth. And for other and separate answer to said complaint these defendants allege that heretofore, on the thirty-first day of May, A. D. 1859, said plaintiff commenced an action in the district court of the twelfth judicial district of this State, in and for the city and county of San Francisco, against Jacob Hahn, John Dunn, John A. Ricchert, Wm. Robinson, John Hagen, Edward C. Kirby, Catherine Matthews, Jas. Patterson, Walter Walsh, W. Burk, Charles Brown, Thos. Hasson, Mary Noonan, Jeremiah Noonan, Thomas J. Haynes, Thos. Gilroy, James McQuade, Louis Fillman, Henry R. Jones, Florence Crow-
126 ley, Charles Moneypenny, Michael Barnes, Thomas B. Valentine, Samuel A. Morrison, George Torrens, John J. Hucks, Albion P. Bessey, Robert Olpherts, William Kelley, R. Merryman, Hamburg, P. Nihoof, John Smith, John Brown, John Doe, Richard Roe, Mary Smith, and Mary Brown, for the recovery of the possession of said lot number ten from said defendants therein.

That in the complaint in said action said plaintiff alleged that he then was the owner of said lot number ten, and claimed the possession from said defendants therein by reason of said alleged ownership.

That said defendants severally answered said complaint, and by their

said answers denied that plaintiff was the owner of said lot, or of any part thereof; and said defendant, John Dunn, by his answer, alleged that he was the owner of said pieces or parcels of land in said second answer described.

That such proceedings were thereupon had in said suit that afterwards, to wit, on the twelfth day of December, 1860, the said cause on the issues therein was tried by said court, and a jury (by consent of parties) of six persons.

127 That thereupon, on motion of plaintiff, said cause was dismissed as to said defendants Robert Olpherts and William Kelley.

That after the introduction of evidence on the part of said plaintiff, the said jury found a verdict for said defendants and for said John Dunn therein, which verdict was duly entered in the proper minutes and records of said court.

That thereupon it was by said court in said cause ordered, adjudged, and decreed, that said plaintiff therein should take nothing by his said action against the said Jacob Hahn, John Dunn, John A. Reichert, William Robinson, John Hagan, Edward C. Kirby, Catherine Patterson, late Catherine Matthews, James Patterson, Walter Walsh, John Burk (sued as W. Burk), Charles Brown, Thomas Hassan, Jeremiah Noonan, Thomas J. Haynes, Thomas Gilroy, James McQuade, Catherine McQuade, Louis Fillman, Henry B. Jones, Florence Crowley, Charles Moneypenny, Michael Barden (sued as Michael Barnes), Thomas B. Valentine, Samuel A. Morrison, George Torrens, John J. Hucks, Albion P. Bessey, Richard Merriman, Charles Hamburg, Patrick Keating, Thomas Clary, William Weir, Hugh Cowan, Levi

128 B. Kaster, John Dobson, William Fox, George Dougherty, and Thomas Castillo; but that said defendants should have and recover of and from plaintiff their costs, which judgment is still in full force.

That afterwards the said plaintiff appealed to the supreme court of said State from said judgment, and from the order of said court denying him a new trial therein; and that said supreme court by its judgment and decision rendered in the August term of said supreme court, A. D. 1862, duly affirmed said judgment, and the remittitur affirming the same was duly filed in said district court on the sixteenth day of October, 1862, as by the records and proceedings in said cause in said district court of the twelfth judicial district more fully appear.

That said John Dunn died in the month of May, 1871, in the occupation and possession of said parcels of land in said second answer described; that letters testamentary on his estate were issued on the 15th June, 1871, out of and by the probate court of said city and

129 county to said Laurence Dunn and William Dunn, who duly qualified and became and still are such executors, and that at the time of the commencement of this suit such executors held and occupied all of said parcels of land, in said second answer described, by their tenants, to wit, said Lawlor Bool, Kain, and Margaret Dunn, by the license and permission of said Laurence Dunn and Wm. Dunn as such executors.

And these defendants deny that they or either of them, at the time of the commencement of this suit, were in possession of any portion of said lot number ten, other than the part thereof which is described in said second answer.

Seventh. And for other and separate answer to said complaint, these defendants allege that on the 15th day of April, 1868, said plaintiff commenced a suit, commonly called an action of ejectment, in the district

court of the fifteenth judicial district of the State of California, in and for the city and county of San Francisco, against Miller & Co., T. Miller, E. C. Kirby, John Pennyman, John Penniman, Mary Roe Conrad, John Shultz, John Schults, Tho's O'Brien, Tho's O'Brian, Hanna Ward,
130 Morris Michels, Margaret Burk, John Murphy, Mrs. Brown, Mary Brown, John Doe Brown, H. Rosenbaum, Jane Cox, Robert Brown, John Brown, Angus Leslie, Mary Leslie, R. W. Roland, Amanda E. Whitford, Salvator Marcelini, Cha's Laurence, John Williams, J. A. Caldwell, August Brandt, John Benson, John Maloney, Jacob Schmidt, D. Harris, John Burk, Patrick Burns, Bridget Basdon, Henry Cheno, Mrs. S. Simpson, John Eyre, Martha Crump, Henry Peterson, James Hogan, James Hagan, Olphant, Oliphant, C. McQuade, W'm Parker, John Cleary, Jane Quirk, Lewis Branig, Margaret Foley, August Bausch, Barnard O'Farrell, Michael Reynolds, Simon Rumley, Frederickson, Hans Smith, Champagne Charlie, Coal Oil Tommy, Patrick from Cork, Mjchael from Tipperary, John Doe, Richard Roe, John Doe, jr., Richard Roe, jr., John Doe, 2d, Richard Roe, 2d, John Doe, 3d, and Richard Roe, 3d, for the recovery of said one hundred vara lot number ten.

That said defendants are and were respectively the defendants in this action, or the grantors or tenants respectively of these defendants.

That in his complaint in said suit in said fifteenth district court,
131 said plaintiff alleged that he was the owner in fee, and entitled to the possession of said lot number ten.

That the defendants therein respectively answered said complaint, and respectively denied in their answers the alleged title and right of possession of said plaintiff therein to said lot, and respectively alleged ownership of the several portions thereof, claimed by each in themselves respectively, or their lessors.

That such proceedings were thereupon had in said fifteenth district court, that a trial of said action was had before the court without a jury (a jury having been by counsel of the parties waived), on the 30th day of August, 1868, and on the said trial said plaintiff was non-suited, and a judgment of non-suit for said defendants therein was entered on the 2d day of September, 1868, in the said court.

That afterwards, in due time, on the 20th day of September, 1870, an appeal was taken in said cause by said plaintiff from said judgment of non-suit of said district court to the supreme court of the State of California, the transcript on said appeal being duly prepared and
132 filed in said supreme court, and that said cause and said appeal was at the time of the commencement of this suit, and still is, pending in said supreme court, in no way affirmed, reversed, or decided.

Wherefore, these defendants pray for judgment that the said alleged claim of plaintiff to said lot may be adjudged to be wholly void as against the defendants.

That said Laurence Dunn and W'm Dunn, as such executors, be decreed to be the owners and entitled to the possession of said part of said lot which is described in said second answer.

That plaintiff and his grantees and assigns be forever enjoined by the order of this court from claiming or pretending to claim, and from bringing suit for, the said portion of said lot; and that defendants have judgment for their costs of this suit.

A. CAMPBELL AND
CHAS. N. FOX,
Attorneys for said Defendants.

133 (Endorsed:)

Service of a copy of the within answer hereby admitted this first day of April, A. D. 1873.

WM. H. PATTERSON,
Attorney for Plaintiff.

Filed April 1st, 1873.

L. S. B. SAWYER, *Clerk*,
By J. F. O'BEIRNE.
Deputy Clerk.

134 *Answer of Wm. Craine and others.*

In the circuit court of the United States in and for the district of California.

WILLIAM NEWTON MEEKS, PLAINTIFF,
vs.
FERDINAND VASSAULT, MAURICE DORE, AND others, defendants.

First. William Craine, Henry Chester, J. B. Morrison, Elizabeth McGee, and Henry McLaughlin, five of the defendants in this suit, for answer to the complaint of said plaintiff therein, deny each and every allegation, statement, matter, and thing in said complaint contained.

Second. And for other and separate answer to said complaint these defendants state that before and at the time of the commencement of this suit said William Craine was, and has ever since been, and still is, the owner in fee of that portion of said one hundred vara lot number ten in the complaint named, which is described as follows:

135 Being subdivision numbers thirty-four (34), thirty-five (35), and forty six (46), of said one hundred vara lot, commencing at a point on the southeasterly line of Mission street, distant three hundred and sixty-three feet eight inches, (363^8) northeasterly from the northeasterly line of Third street; thence running northeasterly along said line of Mission street forty-four feet four inches (44^4); thence at right angles southeasterly eighty (80) feet; thence at right angles southwesterly twelve (12) feet; thence at right angles southeasterly eighty (80) feet to the northwesterly line of Minna street; thence southwesterly thereon twenty-five (25) feet; thence at right angles northwesterly eighty (80) feet; thence at right angles southwesterly seven (7) feet four (4) inches, and thence at right angles northwesterly eighty (80) feet to the point of commencement.

And that these defendants, at the time of the commencement of this suit, had not and have not now the possession or occupation of any other portion of said lot number ten. And that said Chester, Morrison, McGee, and McLaughlin, at the time of the commencement of this

136 suit, occupied said portion of said lot by the license and permission of said Craine.

Third. And for other and separate answer to said complaint, these defendants say that neither said plaintiff nor his ancestors, predecessors or grantors, or any of them, have been seized or possessed of any part of that portion of said lot number ten, which is particularly in said second answer and defence above described, within fifteen years next before the commencement of this suit, that no entry, peaceable or otherwise, has been made on said portion of said lot within said fifteen years next be-

fore the commencement of this suit, by plaintiff, or by his ancestors, predecessors or grantors, or any of them, or by any person through whom they or either of them claim or have claimed title or right of possession of said lot.

And these defendants aver that said portion of said lot in said second answer above described has been continuously held and possessed and occupied adversely to all title or claim of title of or in said plaintiff or his ancestors, predecessors or grantors, or those through whom any of
137 them claim title or right of possession in the premises by said Craine by himself and his tenants thereof for more than fifteen years next before and at the time of the commencement of this suit.

That the grantors of said Wm. Craine, than fifteen years before the commencement of this suit, entered into the actual possession and occupation of said portion of said lot in said second answer described under a claim of title, and not otherwise, and founded such claim of title upon a written instrument and deed of said portion of said lot, and that there has been continued adverse occupation and possession of said portion of said lot so included in said deed under said claim for more than fifteen years next before the commencement of this suit in and by said Craine by himself and his tenants, and that such possession still continues in them, and that said portion of said lot, so held in such adverse possession and occupation, has been usually and continuously improved during all of said fifteen years, and that defendants were not at the time of the commencement of this suit in the occupation or possession of any other part of said lot.

138 Fourth. And for other and separate answer to said complaint these defendants allege that George Harlan was at the time of his death the owner in fee of the said lot number ten. That he died intestate on or about the eighth day of July, 1850, at the county of Santa Clara, of which he was then a resident. That the probate court of said county of Santa Clara had jurisdiction in the premises.

That said probate court, after due and legal notice, on the fifteenth day of June, 1855, appointed Benjamin Aspinall administrator of the estate of said George Harlan, deceased. That letters of administration on said estate were duly issued to said Aspinall, who then and there duly qualified as such administrator, gave the bond required by law in the premises, became and was the lawful and acting administrator of and on said estate.

That afterwards, and while said Aspinall was so qualified and acting as such administrator, and after he had on the twenty-fifth day of August, 1855, presented his petition as such to said probate court praying for an order and authority to sell the real estate of said estate, including
139 said lot number ten, and after said court had on the tenth day of November, 1855, duly made an order authorizing, empowering and directing said Aspinall as such administrator to sell said real estate, and after posting and publishing notice of the time and place of such sale, and giving bond as required by law, the said Benjamin Aspinall, as such administrator and acting as such under the provisions of chapter VII of an act of said State entitled "An act to regulate the settlement of the estates of deceased persons," approved May 1st, 1851, on the seventh day of January, 1856, between the hours of nine o'clock in the morning and the setting of the sun on that day, at an auction room which then was a public place in said city and county of San Francisco, where said premises are situated, at public auction sold the said portion of said lot in said second answer above described, portion of said lot number ten.

That at said sale John Hagan was the highest and best bidder for a por-

tion of said lot including said part in said second answer described, and purchased the same for the sum of $600, which then and there was
140 the fair value, and not in any way disproportioned to the value thereof, and which was then and there paid to the said administrator by said purchaser thereof as the purchase price thereof; which sale by said administrator after due notice was afterwards and before the thirteenth day of February, 1856, by said probate court confirmed, and said administrator ordered by said court to make, execute and deliver to said purchaser a deed of conveyance of said premises.

That afterwards, on the said thirteenth day of February, 1856, the said Benjamin Aspinall, as such administrator, made, executed, and delivered to the said purchaser a deed of conveyance of said portion of said lot, and thereby granted, bargained, and sold and conveyed, and which purported to grant, bargain, and sell and convey, all the estate, right, title, and interest of said George Harlan at the time of his death in and to said part of said lot in said second answer above described to said John Hagan, who, before the commencement of this suit, sold, and by deed conveyed, the same to said William Craine, who then became and still is the owner thereof, and that the defendants,
141 Chester, Morrison, McGee, and McLaughlin, at the commencement of this suit held and occupied, and still hold and occupy, the same by his permission.

That immediately after the said delivery of said deed, and more than fifteen years before the commencement of this suit, the said John Hagan entered into the actual occupation and possession of said portion of said lot under said deed, claiming to own the same in fee under said deed, from said Aspinall, as such administrator, and by himself and his tenants has continuously thence hitherto held and possessed the same until said conveyance thereof to said Craine, who has since then held and occupied the same by himself and his tenants, and still holds and possesses the same by himself and his tenants, and that said Chester, Morrison, McGee, and McLaughlin, at the commencement of this suit, occupied said portion by the license and permission of said Craine.

That more than fifteen years from the time of said sale, and from the said making and delivery of said deed, and from the entry as
142 aforesaid of said John Hagan, under and through the same, upon said portion of said lot, and during a period of more than twelve years, while the administrations of said Aspinall, and of Lucien B. Huff and Joel Harlan, respectively, were in full force, and while they were respectively acting as such administrators on said estate, have elapsed before the commencement of this suit.

That said Benjamin Aspinall continued to be and to act as such administrator until the eighth day of August, 1863; that said Joel Harlan and Lucien B. Huff were, by said probate court, duly appointed administrators of the estate of said George Harlan, deceased, on the twelfth day of May, 1864, and letters of administration thereupon issued to them on said estate. That they thereupon duly qualified, gave bonds as required by law, and entered on the discharge of their duties as such administrators, and have since been such administrators and acting as such in the premises until the year 1871.

And these defendants deny that they were, at the time of the commencement of this suit, in possession of any other portion of said
143 lot number ten than that described in said second answer.

And said defendants, further answering, say that the title so acquired by said conveyance from said Aspinall as such administrator to said John Hagan was and is ratified, confirmed, and made valid and

sufficient in law to, and did transfer to said Craine, as the grantee of said John Hagan, the title to the portion of said lot number ten described in said second answer, under and by virtue of the provisions of an act of the legislature of said State, entitled "An act in relation to the probate sales," approved April 2d, 1866.

Fifth. And for other and separate answer to said complaint, these defendants allege that heretofore, on the thirty-first day of May, A. D. 1859, said plaintiff commenced an action in the district court of the twelfth judicial district of this State, in and for the city and county of San Francisco, against Jacob Hahn, John Dunn, John A. Riechert, Wm. Robinson, John Hagen, Edward C. Kirby, Catherine Matthews, Jas. Patterson, Walter Walsh, W. Burk, Charles Brown, Thos. Hasson, Mary Noonan, Jeremiah Noonan, Thomas J. Haynes, Thos. Gilroy,
144 James McQuade, Louis Fillman, Henry B. Jones, Florence Crowley, Charles Moneypenny, Michael Barnes, Thomas B. Valentine, Samuel A. Morrison, George Torrens, John J. Hucks, Albion P. Bessey, Robert Olpherts, William Kelley, R. Merryman, Hamburg, P. Nihoof, John Smith, John Brown, John Doe, Richard Roe, Mary Smith, and Mary Brown, for the recovery of the possession of said lot number ten from said defendants therein.

That in the complaint in said action, said plaintiff alleged that he then was the owner of said lot number ten, and claimed the possession from said defendants therein by reason of said alleged ownership.

That said defendants severally answered said complaint, and by their said answers denied that plaintiff was the owner of said lot, or of any part thereof; and said defendant John Hagan, by his said answer, alleged that he was the owner of said subdivisions numbers 34, 35, and 46, which are in said second answer described.

That such proceedings were thereupon had in said suit, that afterwards, to wit, on the twelfth day of December, 1860, the said cause
146 on the issues therein was tried by said court, and a jury (by consent of parties) of six persons.

That thereupon, on motion of plaintiff, said cause was dismissed as to said defendants Robert Olpherts and William Kelley.

That after the introduction of evidence on the part of said plaintiff the said jury found a verdict for said defendant Hagan therein, which verdict was duly entered in the proper minutes and records of said court.

That thereupon it was by said court in said cause ordered, adjudged, and decreed that said plaintiff therein should take nothing by his said action against the said Jacob Hahn, John A. Reichert, William Robinson, John Hagan, Edward C. Kirby, Catherine Patterson (late Catherine Matthews), James Patterson, Walter Walsh, John Burk (sued as W. Burk), Charles Brown, Thomas Hassan, Jeremiah Noonan, Thomas J. Haynes, Thomas Gilroy, James McQuade, Catherine McQuade, Lewis Fillman, Henry B. Jones, Florence Crowley, Charles Moneypenny, Michael Barden (sued as Michael Barnes), Thomas B. Valentine,
146 Samuel A. Morrison, George Torrens, John J. Hucks, Albion P. Bessey, Richard Merriman, Charles Hamburg, Patrick Keating, Thomas Clary, William Weir, Hugh Cowan, Levi B. Kester, John Dobson, William Fox, George Dougherty, and Thomas Castillo; but that said defendants should have and recover of and from plaintiff their costs, which judgment is still in full force.

That afterwards the said plaintiff appealed to the supreme court of said State, from said judgment, and from the order of said court denying him a new trial therein; and that said supreme court by its judgment

and decision rendered in the August term of said supreme court, A. D. 1862, duly affirmed said judgment, and the remittitur affirming the same was duly filed in said district court, on the sixteenth day of October, 1862, as by the records and proceedings in said cause in said district court of the twelfth judicial district more fully appear.

That said John Hagan, defendant in said suit, before the commencement of this suit, sold and by deed conveyed said subdivisions
147 34 and 35 and 46 of said lot, which are in said second answer above described, to William Craine, who then became and still is the owner thereof, and by whose license and permission the defendants Chester, Morrison, McGee, and McLaughlin, at the said time of the commencement of this suit, held and occupy, and still hold and occupy the same, and that neither of said defendants then were in the possession of any part of said lot number ten.

Seventh. And for other and separate answer to said complaint, these defendants allege that on the 15 day of April, 1868, said plaintiff commenced a suit, commonly called an action in ejectment, in the district court of the fifteenth judicial district of the State of California, in and for the city and county of San Francisco, against Miller & Co., T. Miller, E. C. Kirby, John Pennyman, John Penniman, Mary Roe Conrad, John Shultz, John Schults, Thos. O'Brien, Thos. O'Brian, Hanna Ward, Morris Michels, Margaret Burk, John Murphy, Mrs. Brown, Mary Brown, John Doe Brown, H. Rosenbaum, Jane Cox, Robert Brown, John Brown, Angus Leslie, Mary Leslie, R. W. Roland, Amanda E.
148 Whitford, Salvator Marcelini, Chas. Laurence, John Williams, J. A. Caldwell, August Brandt, John Benson, John Maloney, Jacob Schmidt, D. Harris, John Burk, Patrick Burns, Bridget Bardon, Henry Cheno, Mrs. S. Simpson, John Eyre, Martha Crump, Henry Peterson, James Hogan, James Hagan, Olphant, Oliphant, C. McQuade, Wm. Parker, John Cleary, Jane Quirk, Lewis Branig, Margaret Foley, August Bausch, Barnard O'Farrell, Michael Reynolds, Simon Rumley, Frederickson, Hans Smith, Champagne Charlie, Coal Oil Tommy, Patrick from Cork, Michael from Tipperary, John Doe, Richard Roe, John Doe, jr., Richard Roe, jr., John Doe, 2d, Richard Roe, 2d, John Doe, 3d, Richard Roe, 3d, for the recovery of said one hundred vara lot number ten.

That said defendants are and were respectively the defendants in this action or the grantors or tenants respectively of these defendants. That in his complaint in said suit in said fifteenth district court said plaintiff alleged that he was the owner in fee and entitled to the possession of said lot number ten; that the defendants therein respectively an-
149 swered said complaint and respectively denied in their answers the alleged title and right of possession of said plaintiff therein to said lot and respectively alleged ownership of the several portions thereof claimed by each in themselves respectively or their lessors.

That such proceedings were thereupon had in said fifteenth district court that a trial of said action was had before the court without a jury (a jury having been by counsel of the parties waived) on the 30th day of August, 1868, and on the said trial said plaintiff was nonsuited, and a judgment of nonsuit for said defendants therein was entered on the 2d day of September, 1868, in the said court.

That afterwards in due time, on the 20th day of September, 1870, an appeal was taken in said cause by said plaintiff from said judgment of nonsuit of said district court to the supreme court of the State of California, the transcript on said appeal being duly prepared and filed in said supreme court, and that said cause and said appeal was at the time

of the commencement of this suit and still is pending in said su-
150 preme court in no way affirmed, reversed, or decided.

Wherefore these defendants pray for judgment that the said alleged claim of plaintiff to said lot may be adjudged to be wholly void as against these defendants.

That said defendant Craine be decreed to be the owner and entitled to the possession of said part of said lot, which is described in said second answer.

That plaintiff and his grantees and assigns be forever enjoined by the order of this court from claiming or pretending to claim, and from bringing suit for, the said portion of said lot, and that defendants have judgment for their costs of this suit.

A. CAMPBELL AND
CHAS. N. FOX,
Attorneys for said Defendants.

(Endorsed:)
Service of a copy of the within answer hereby admitted this first day of April, 1873.

WM. H. PATTERSON,
Attorn'y for Plaintiff.

Filed April 1st, A. D. 1873.

L. S. B. SAWYER,
Clerk,
By J. F. O'BEIRNE,
Dep. Clk.

151 *Answer of Bridget B. Mitchell and Patrick Mitchell.*

In the circuit court of the United States in and for the district of California.

WILLIAM NEWTON MEEKS, PLAINTIFF,
vs.
FERDINAND VASSAULT, MAURICE DORE, AND others, defendants.

First. Bridget B. Mitchell and Patrick Mitchell, her husband, two of the defendants in this suit, for answer to the complaint of said plaintiff therein, deny each and every allegation, statement, matter, and thing in said complaint contained.

Second. And for other and separate answer to said complaint these defendants state that before and at the time of the commencement of this suit Bridget B. Mitchell was and has ever since been and still is the owner in fee of that portion of said one hundred-vara lot number ten in complaint named, which is described as follows, being subdivision number fifty-five (55) of said lot number ten:

Commencing at a point on the southeasterly line of Minna
152 street, distant four hundred and twenty-one feet nine inches (421^9) northeasterly from the northeasterly line of Third street; thence running northeasterly along said line of Minna street nineteen feet six inches (19^6); thence at right-angles southeasterly seventy (70) feet; thence at right-angles southwesterly nineteen feet six inches (19^6); and thence at right-angles northwesterly seventy (70) feet to the point of commencement.

And that these defendants at the time of the commencement of this

suit were not and are not now in the possession or occupation of any other portion of said lot number ten. And that said Bridget B. Mitchell and her said husband, Patrick Mitchell, at the time of the commencement of this suit occupied said subdivision number 55 of said lot.

Third. And for other and separate answer to said complaint these defendants say that neither said plaintiff nor his ancestors, predecessors, or grantors, or any of them, have been seized or possessed of any part of that portion of said lot number ten which is particularly in said second answer and defence above described, within fifteen years
153 next before the commencement of this suit; that no entry, peaceable or otherwise, has been made on said portion of said lot within said fifteen years next before the commencement of this suit. by plaintiff or by his ancestors, predecessors, or grantors, or any of them, or by any person through whom they or either of them claim or have claimed title or right of possession of said lot.

And these defendants aver that said portion of said lot in said second answer above described has been continuously held and possessed and occupied adversely to all title or claim of title of or in said plaintiff or his ancestors, predecessors, or grantors, or those through whom any of them claim title or right of possession in the premises by said Bridget B. Mitchell and her grantors, by herself and her tenants thereof, for more than fifteen years next before and at the time of the commencement of this suit.

That said grantors of said Bridget and said Bridget more than fifteen years before the commencement of this suit entered into the actual possession and occupation of said portion of said lot in said second
154 answer described under a claim of title, and not otherwise, and founded such claim of title upon a written instrument and deed of said portion of said lot, and that there has been continued adverse occupation and possession of said portion of said lot so included in such deed under said claim for more than fifteen years next before the commencement of this suit in and by said Bridget and her grantors and their tenants, and that such possession still continues in said Bridget and her said husband, and that said portion of said lot so held in such adverse possession and occupation has been usually and continuously improved during all of said fifteen years, and that defendants were not at the time of the commencement of this suit in the occupation or possession of any other part of said lot.

Fourth. And for other and separate answer to said complaint these defendants allege that George Harlan was, at the time of his death, the owner in fee of the said lot number ten. That he died intestate on or about the eighth day of July, 1850, at the county of Santa Clara, of which he was then a resident.

155 That the probate court of said county of Santa Clara had jurisdiction in the premises. That said probate court after due and legal notice on the fifteenth day of June, 1855, appointed Benjamin Aspinall administrator of the estate of said George Harlan, deceased. That letters of administration on said estate were duly issued to said Aspinall, who then and there duly qualified as such administrator, gave the bond required by law in the premises, became and was the lawful and acting administrator of and on said estate.

That afterwards and while said Aspinall was so qualified and acting a' such administrator, and after he had on the twenty-fifth day of August, 1855, presented his petition as such to said probate court praying for an order and authority to sell the real estate of said estate including said lot number ten, and after said court had on the tenth day

of November, 1855, duly made an order authorizing, empowering, and directing said Aspinall as such administrator to sell such real estate,
and after posting and publishing notice of the time and place of
156 such sale, and giving bond as required by law, the said Benjamin
Aspinall, as such administrator and acting as such under the provisions of Chapter VII of an act of said State entitled "An act to regulate the settlement of the estates of deceased persons," approved May 1st, 1851, on the seventh day of January, 1856, betwen the hours of nine o'clock in the morning and the setting of the sun on that day, at an auction room which was then a public place in said city and county of San Francisco where said premises are situated, at public auction, sold the said portion of said lot in said second answer above described, portion of said lot number ten.

That at said sale Charles Moneypenny was the highest and best bidder for a portion of said lot, including said part in said second answer described, and purchased the same for the sum of $150, which then and there was the fair value, and not in any way disproportionate to the value thereof, and which was then and there paid to the said administrator by said purchaser thereof as the purchase price thereof;
which sale by said administrator after due notice was afterwards
156½ and before the thirteenth day of February, 1856, by said probate
court confirmed, and said administrator ordered by said court to make, execute, and deliver to said purchaser a deed of conveyance of said premises.

That afterwards, on the said thirteenth day of February, 1856, the said Benjamin Aspinall as such administrator made, executed, and delivered to the said purchaser a deed of conveyance of said portion of said lot, and thereby granted, bargained and sold, and conveyed, and which purported to grant, bargain and sell, and convey all the estate, right, title, and interest of said George Harlan at the time of his death in and to said part of said lot in said second answer above described to Charles Moneypenny, who on the 15th day of November, 1862, sold and conveyed the same to Bridget Borden (who is now Bridget B. Mitchell, said defendant, by intermarriage with said Patrick Mitchell since said 15th November).

That immediately after the said delivery of said deed, and more than
fifteen years before the commencement of this suit, the said Charles
157 Moneypenny entered into the actual occupation and possession of
said portion of said lot under said deed, claiming to own the same in fee under said deed from said Aspinall as such administrator, and by himself and his tenants has continuously thence hitherto held and possessed the same until said conveyance to said Bridget, who thenceforth held and possessed the same by herself and her tenants, and still holds and possesses the same by herself and her said husband, Patrick.

That more than fifteen years from the time of said sale, and from the said making and delivery of said deed, and from the entry as aforesaid of said Moneypenny, under and through the same, upon said portion of said lot, and during a period of more than twelve years, while the administrations of said Aspinall and of Lucien B. Huff and Joel Harlan, respectively, were in full force, and while they were respectively acting as such administrators on said estate, have elapsed before the commencement of this suit.

That said Benjamin Aspinall continued to be and to act as such ad-
ministrator until the eighth day of August, 1863. That said Joel
158 Harlan and Lucien B. Huff were by said probate court duly ap-
pointed administrators of the estate of George Harlan, deceased,

on the twelfth day of May, 1864, and letters of administration thereupon issued to them on said estate. That they thereupon duly qualified, gave bonds as required by law, and entered on the discharge of their duties as such administrators, and have since been such administrators and acting as such in the premises until the year 1871.

And these defendants deny that they were at the time of the commencement of this suit in possession of any other portion of said lot number ten than that described in said second answer.

And said defendants, further answering, say that the title so acquired by said conveyance from said Aspinall as such administrator to said Moneypenny was and is ratified, confirmed, and made valid and sufficient in law to, and did transfer to said Moneypenny and to said Bridget the title to the portion of said lot number ten described in said second answer, under and by virtue of the provisions of an act of the legis-
159 lature of said State, entitled "An act in relation to probate sales," approved April 2d, 1866.

Fifth. And for other and separate answer to said complaint these defendants allege that heretofore, on the thirty-first day of May, A. D. 1859, said plaintiff commenced an action in the district court of the twelfth judicial district of this State, in and for the city and county of San Francisco, against Jacob Hahn, John Dunn, John A. Riechert, Wm. Robinson, John Hagen, Edward C. Kirby, Catherine Matthews, Jas. Patterson, Walter Walsh, W. Burk, Charles Brown, Thos. Hasson, Mary Noonan, Jeremiah Noonan, Thomas J. Haynes, Thos. Gilroy, James McQuade, Louis Fillman, Henry B. Jones, Florence Crowley, Charles Moneypenny, Michael Barnes, Thomas B. Valentine, Samuel A. Morrison, George Torrens, John J. Hucks, Albion P. Bessey, Robert Olpherts, William Kelley, R. Merryman, Hamburg, P. Nihoof, John Smith, John Brown, John Doe, Richard Roe, Mary Smith, and Mary Brown for the recovery of the possession of said lot number ten from said defendants therein.

That in the complaint in said action said plaintiff alleged that
160 he then was the owner of said lot number ten, and claimed the possession from said defendants therein by reason of said alleged ownership.

That said defendants severally answered said complaint, and by their said answers denied that plaintiff was the owner of said lot, or of any part thereof; and said defendant Charles Moneypenny by his said answer alleged that he was the owner of said portion of said lot in said second answer described, to wit, said subdivision number 55.

That such proceedings were thereupon had in said suit that afterwards, to wit, on the twelfth day of December, 1860, the said cause on the issues therein was tried by said court, and a jury (by consent of parties) of six persons.

That thereupon, on motion of plaintiff, said cause was dismissed as to said defendants Robert Olpherts and William Kelley.

That after the introduction of evidence on the part of said plaintiff, the said jury found a verdict for said defendant therein, which verdict was duly entered in the proper minutes and records of said court.
161 That thereupon it was by said court in said cause ordered, adjudged, and decreed that said plaintiff therein should take nothing by his said action against the said Jacob Hahn, John Dunn, John A. Reichert, William Robinson, John Hagan, Edward C. Kirby, Catherine Patterson (late Catherine Matthews), James Patterson, Walter Walsh, John Burke (sued as W. Burke), Charles Brown, Thomas Hasson, Jeremiah Noonan, Thomas J. Haynes, Thomas Gilroy, James McQuade, Catherine

McQuade, Louis Fillman, Henry B. Jones, Florence Crowley, Charles Moneypenny, Michael Barden (sued as Michael Barnes), Thomas B. Valentine, Samuel A. Morrison, George Torrens, John J. Hucks, Albion P. Bessey, Richard Merriman, Charles Hamburg, Patrick Keating, Thomas Clary, William Weir, Hugh Cowan, Levi B. Kester, John Dobson, William Fox, George Dougherty, and Thomas Costillo; but that said defendants should have and recover of and from plaintiff their costs, which judgment is still in full force.

That afterwards the said plaintiff appealed to the supreme court
162 of said State from said judgment, and from the order of said court denying him a new trial therein; and that said supreme court by its judgment and decision rendered in the August term of said supreme court, A. D. 1862, duly affirmed said judgment, and the remittitur affirming the same was duly filed in said district court on the sixteenth day of October, 1862, as by the records and proceedings in said cause in said district court of the twelfth judicial district more fully appear.

That said defendants, Bridget and her said husband, at the commencement of this suit occupied said subdivision number 55.

And these defendants deny that they or either of them at the time of the commencement of this suit were in possession of any portion of said lot number ten other than the part thereof which is described in said second answer.

Seventh. And for other and separate answer to said complaint these defendants allege that on the 15th day of April, 1860, said plaintiff commenced a suit commonly called an action of ejectment in the dis-
163 trict court of the fifteenth judicial district of the State of California, in and for the city and county of San Francisco, against Miller & Co., T. Miller, E. C. Kirby, John Pennyman, John Penniman, Mary Roe Conrad, John Shultz, John Schults, Thos. O'Brien, Thos. O'Brian, Hanna Ward, Morris Michels, Margaret Burk, John Murphy, Mrs. Brown, Mary Brown, John Doe Brown, H. Rosenbaum, Jane Cox, Robert Brown, John Brown, Angus Leslie, Mary Leslie, R. W. Roland, Amanda E. Whitford, Salvator Marcelini, Chas. Lawrence, John Williams, J. A. Caldwell, August Brandt, John Benson, John Maloney, Jacob Schmidt, D. Harris, John Burk, Patrick Burns, Bridget Bordon, Henry Cheno, Mrs. S. Simpson, John Eyre, Martha Crump, Henry Peterson, James Hogan, James Hagan, Olphant, Oliphant, C. McQuade, Wm. Parker, John Cleary, Jane Quirk, Louis Branig, Margaret Foley, August Bausch, Barnard O'Farrell, Michael Reynolds, Simon Rumley, Frederickson, Hans Smith, Champagne Charlie, Coal Oil Tommy, Patrick from Cork, Michael from Tipperary, John Doe, Richard Roe, John Doe, jr., Richard Roe, jr., John
164 Doe, 2d, Richard Roe, 2d, John Doe, 3d, and Richard Roe, 3d, for the recovery of said one hundred vara lot number ten.

That said defendants are and were respectively the defendants in this action or the grantors or tenants respectively of these defendants; that in his complaint in said suit in said fifteenth district court said plaintiff alleged that he was the owner in fee and entitled to the possession of said lot number ten.

That the defendants therein respectively answered said complaint, and respectively denied in their answers the alleged title and right of possession of said plaintiff therein to said lot, and respectively alleged ownership of the several portions thereof claimed by each in themselves respectively or their lessors.

That such proceedings were thereupon had in said fifteenth district court that a trial of said action was had before the court without a

jury (a jury having been by counsel of the parties waived) on the 30th day of August, 1868, and on the said trial said plaintiff was nonsuited, and a judgment of nonsuit for said defendants therein was entered on the 2d day of September, 1868, in the said court.

165 That afterwards in due time, on the 20th day of September, 1870, an appeal was taken in said cause by said plaintiff from said judgment of nonsuit of said district court to the supreme court of the State of California, the transcript on said appeal being duly prepared and filed in said supreme court; and that said cause and said appeal was at the time of the commencement of this suit, and still is, pending in said supreme court in no way affirmed, reversed, or decided.

Wherefore these defendants pray for judgment that the said alleged claim of plaintiff to said lot may be adjudged to be wholly void as against these defendants.

That said defendant Bridget B. Mitchell be decreed to be the owner and entitled to the possession of said part of said lot which is described in said second answer.

That plaintiff and his grantees and assigns be forever enjoined by the order of this court from claiming or pretending to claim and from bringing suit for the said portion of said lot, and that defendants have judgment for their costs of this suit.

A. CAMPBELL AND
166 CHAS. N. FOX,
Attorneys for said Defendants.

(Endorsed:)

Service of a copy of the within answer hereby admitted this first day of April, A. D. 1873.

WM. H. PATTERSON,
Attorney for Plaintiff.

Filed 1st April, A. D. 1873.

L. S. B. SAWYER,
Clerk,
By J. F. O'BEIRNE,
Deputy Clerk.

167 *Answer of Jas. Patterson and others.*

In the circuit court of the United States in and for the district of California.

WILLIAM NEWTON MEEKS, PLAINTIFF,
vs.
FERDINAND VASSAULT, MAURICE DORE, AND others, defendants.

First. James Patterson, Robert Thiele, Otto Jursh, John C. Parks, Mary Devlin, John Hurley, and Frank Lawlor, seven of the defendants in this suit, for answer to the complaint of said plaintiff therein deny each and every allegation, statement, matter, and thing in said complaint contained.

Second. And for other and separate answer to said complaint these defendants state that before the commencement of this suit on the 10th September, 1864, Patrick Matthews was the owner in fee of those portions of said one hundred vara lot, number ten, in the complaint named, which is described as follows:

First. Being subdivision number 39 of said lot; commencing at
168 a point on the southeasterly line of Mission street, distant 275 feet northeasterly from the northeasterly line of Third street; thence northeasterly along said line of Mission street 22 feet 2 inches; thence at right angles southwesterly 22 feet 2 inches; and thence at right angles northwesterly 80 feet to the point of commencement.

Second. Being subdivision number 58 of said lot; commencing at a point in the southeasterly line of Minna street distant 331 feet northeasterly from the northeasterly line of Third street; thence northeasterly along said line of Minna street 30 feet; thence at right angles southeasterly 70 feet; thence at right angles southwesterly 30 feet; thence at right angles northwesterly 70 feet to the point of commencement.

That on the day last named he died at said city and county intestate, a resident thereof; that said James Patterson has, afterwards and before the commencement of this suit, been duly appointed, by the probate court of said city and county, administrator of his estate, and thereupon became and still is such administrator; that at the
169 time of the commencement of this suit he occupied said subdivisions 38 and 59 by himself as such administrator, and by his tenants, said Thiele, Jursh, Parks, Develin, Hurley, and Lawler, to wit, said Thiele, Jursh, Parks, Devlin, Hurley, and Lawler, by the license and permission of said Patterson, as such administrator. And that these defendants, at the time of the commencement of this suit, were not and are not now in the possession or occupation of any other portion of said lot number ten.

Third. And for other and separate answers to said complaint these defendants say that neither said plaintiff, nor his ancestors, predecessors, or grantors, or any of them, have been seized or possessed of any part of that portion of said lot number ten which is particularly in said second answer and defence above described, within fifteen years next before the commencement of this suit; that no entry, peaceable or otherwise, has been made on said portion of said lot within said fifteen years next before the commencement of this suit by plaintiff, or by his ancestors, predecessors, or grantors, or any of them, or by any
170 person through whom they or either of them claim or have claimed title or right of possession of said lot.

And these defendants aver that said portion of said lot in said second answer above described has been continuously held and possessed and occupied adversely to all title or claim of title, of or in said plaintiff, or his ancestors, predecessors, or grantors, or those through whom any of them claim title, or right of possession in the premises by said Patrick Matthews in his lifetime, and until his death on said 10th September, 1864, and by said James Patterson since his death, who has been, before the commencement of this suit, duly appointed, and is administrator of his estate, by himself and his tenants thereof, for more than fifteen years next before and at the time of the commencement of this suit.

That said Matthews, more than fifteen years before the commencement of this suit, entered into the actual possession and occupation of said portion of said lot in said second answer described under a claim of title and not otherwise, and founded such claim of title upon a written instrument and deed of said portion of said lot, and that there has
171 been continued adverse occupation and possession of said portion of said lot so included in such deed under said claim for more

than fifteen years next before the commencement of this suit in and by said Matthews and said Patterson, his duly qualified administrator respectively, and their tenants, and that such possession still continues in said James Patterson, as such administrator, and his said tenants, to wit, said Thiele, Jursh, Parks, Devlin, Hurley and Lawlor, by the license and permission of said Patterson as such administrator, and that said portion of said lot so held in such adverse possession and occupation has been usually and continuously improved during all of said fifteen years; and that defendants were not at the time of the commencement of this suit in the occupation or possession of any other part of said lot.

Fourth. And for other and separate answer to said complaint this defendant alleges that George Harlan was at the time of his death the owner in fee of the said lot number ten. That he died intestate in or about the eighth day of July 1850, at the county of Santa
172 Clara, of which he was then a resident.

That the probate court of said county of Santa Clara had jurisdiction in the premises. That said probate court, after due and legal notice, on the fifteenth day of June, 1855, appointed Benjamin Aspinall administrator of the estate of said George Harlan, deceased. That letters of administration on said estate were duly issued to said Aspinall, who then and there duly qualified as such administrator, gave the bond required by law in the premises, became and was the lawful and acting administrator of and on said estate.

That afterwards and while said Aspinall was so qualified and acting as such administrator, and after he had on the twenty-fifth day of August, 1855, presented his petition as such to said probate court, praying for an order and authority to sell the real estate of said estate, including said lot number ten, and after said court had on the tenth day of November, 1855, duly made an order authorizing, empowering, and directing said Aspinall as such administrator to sell said real es-
173 tate, and after posting and publishing notice of the time and place of such sale, and giving bond as required by law, the said Benjamin Aspinall, as such administrator, and acting as such under the provisions of Chapter VII of an act entitled "An act to regulate the settlement of the estates of deceased persons," approved May 1st, 1851, on the seventh day of January, 1856, between the hours of nine o'clock in the morning and the setting of the sun on that day, at an auction room, which then was a public place in said city and county of San Francisco, where said premises are situated, at public auction, sold the said portion of said lot in said second answer above described, portion of said lot number ten.

That at said sale Patrick Matthews was the highest and best bidder for a portion of said lot, including said part in said second answer described, and purchased the same for the sum of $210, which then and there was the fair value, and not in any way disproportionate to the value thereof, and which was then and there paid to the said administrator by said purchaser thereof, as the purchase price thereof; which sale by
174 said administrator after due notice was afterwards and before the thirteenth day of February, 1856, by said probate court confirmed, and said administrator ordered by said court to make, execute, and deliver to said purchaser a deed of conveyance of said premises.

That afterwards, on the said thirteenth day of February, 1856, the said Benjamin Aspinall as such administrator made, executed, and delivered to the said purchaser a deed of conveyance of said portion of said lot, and thereby granted, bargained, and sold, and conveyed, and which purported to grant, bargain, and sell and convey all the estate, right,

title, and interest of said George Harlan at the time of his death in and to said part of said lot in said second answer above described to said Patrick Matthews, who died intestate at said city and county on the said 10th September, 1864, being a resident thereof, then being still the owner of said subdivisions 39 and 58 of said lot.

That said James Patterson was thereupon and before the commencement of this suit duly appointed by the probate court of said city and county the administrator of his estate, and thereupon qualified,
175 became, and is still such administrator.

That at the time of the commencement of this suit said Patterson, as such administrator, by himself and his said tenants, to wit said Thiele, Jursh, Parks, Develin, Hurley, and Lawlor, by the license and permission of said Patterson as such administrator, occupied and held said subdivisions 39 and 58 of said lot. That immediately after the said delivery of said deed, and more than fifteen years before the commencement of this suit, the said Patrick Matthews entered into the actual occupation and possession of said portion of said lot under said deed, claiming to own the same in fee under said deed from said Aspinall as such administrator, and by himself and his tenants has continuously thence hitherto held and possessed the same until his said death, and that his said administrator, from and ever since the death of said Matthews, has held and possessed, and still holds and possesses, the same by himself as such administrator and his tenants.

That more than fifteen years from the time of said sale, and from the said making and delivery of said deed, and from the entry, as
176 aforesaid, of said Patrick Matthews under and through the same upon said portion of said lot, and during a period of more than twelve years, while the administrations of said Aspinall and of Lucien B. Huff and Joel Harlan respectively were in full force, and while they were respectively acting as such administrators on said estate, have elapsed before the commencement of this suit.

That said Benjamin Aspinall continued to be and to act as such administrator until the eight' day of August, 1863. That said Joel Harlan and Lucien B. Huff were, by said probate court, duly appointed administrators of the estate of said George Harlan, deceased, on the twelfth day of May, 1864, and letters of administration thereupon issued to them on said estate.

That they thereupon duly qualified, gave bonds as required by law, and entered on the discharge of their duties as such administrators, and have since been such administrators, and acting as such in the premises until the year 1871.

And these defendants deny that they were at the time of the
177 commencement of this suit in possession of any other portion of said lot number ten than that described in said second answer.

And said defendant, further answering, say that the title so acquired by said conveyance from said Aspinall as such administrator to said Patrick Matthews was and is ratified, confirmed, and made valid and sufficient in law to and did transfer to said Matthews and his heirs and administrators the title to the portion of said lot number ten in said second answer under and by virtue of the provisions of an act of the legislature of said State, entitled "An act in relation to probate sales," approved April 2d, 1866.

Fifth. And for other and separate answer to said complaint these defendants allege that heretofore, on the thirty-first day of May, A. D. 1859, said plaintiff commenced an action in the district court of the twelfth judicial district of the State, in and for the city and county of

San Francisco, against Jacob Hahn, John Dunn, John A. Riechert, W'm Robinson, John Hagen, Edward C. Kirby, Catherine Matthews, Ja's Patterson, Walter Walsh, W. Burk, Charles Brown,
178 Tho's Hasson, Mary Noonan, Jeremiah Noonan, Thomas J. Haynes, Tho's Gilroy, James McQuade, Louis Fillman, Henry B. Jones, Florence Crowley, Charles Moneypenny, Michael Barnes, Thomas B. Valentine, Samuel A. Morrison, George Torrens, John J. Hucks, Albion P. Bessey, Robert Olpherts, William Kelley, R. Merryman, Humburg P. Nihoof, John Smith, John Brown, John Doe, Richard Roe, Mary Smith, and Mary Brown, for the recovery of the possession of said lot number ten from said defendants therein.

That in the complaint in said action said plaintiff alleged that he then was the owner of said lot number ten, and claimed possession from said defendants therein by reason of said alleged ownership.

That said defendants severally answered said complaint, and by their said answers denied that plaintiff was the owner of said lot, or of any part thereof, and said defendant, James Patterson, by his said answer, alleged that Patrick Matthews was the owner of said subdivisions number 39 and 58 in said second answer described at the time of his
179 death, and that said Patterson, at the time of the commencement of this suit, held the same as such administrator as aforesaid.

That such proceedings were thereupon had in said suit that afterwards, to wit, on the 12th day of December, 1860, the said cause on the issues therein was tried by said court and a jury (by consent of parties) of six persons.

That thereupon, on motion of plaintiff, said cause was dismissed as to said defendants Robert Olpherts and William Kelley.

That after the introduction of evidence on the part of said plaintiff the said jury found a verdict for said defendants and for said Patterson therein, which verdict was duly entered in the proper minutes and records of said court.

That thereupon it was by said court in said cause ordered, adjudged, and decreed that said plaintiff therein should take nothing by his said action against the said Jacob Hahn, John Dunn, John A. Reichert, William Robinson, John Hagan, Edward C. Kirby, Catherine Patterson (late Catherine Matthews), James Patterson, Walter Walsh,
180 John Burke (sued as W. Burk), Charles Brown, Thomas Hasson, Jeremiah Noonan, Thomas J. Haynes, Thomas Gilroy, James McQuade, Catherine McQuade, Louis Fillman, Henry B. Jones, Florence Crowley, Charles Moneypenny, Michael Barden (sued as Michael Barnes), Thomas B. Valentine, Samuel A. Morrison, George Torrens, John J. Hucks, Albion P. Bessey, Richard Merriman, Charles Hamburg, Patrick Keating, Thomas Clary, William Weir, Hugh Cowan, Levi B. Kester, John Dobson, William Fox, George Dougherty, and Thomas Costillo, but that said defendants should have and recover of and from plaintiff their costs, which judgment is still in full force.

That afterwards the said plaintiff appealed to the supreme court of said State from said judgment, and from the order of said court denying him a new trial therein; and that said supreme court, by its judgment and decision rendered in the August term of said supreme court, A. D. 1862, duly affirmed said judgment, and the remittitur affirming the same was duly filed in said district court on the sixteenth day of Octo-
181 ber, 1862, as by the records and proceedings in said cause in said district court of the twelfth judicial district more fully appear.

The said Patrick Matthews died on said 10th September, 1864, in the occupation and possession of said subdivisions numbers 39 and 58; that

said James Patterson thereupon and before the commencement of this suit was duly appointed by the probate court of said city and county (where said Patrick resided at the time of his death) administrator on his estate; that said Patterson duly qualified, became, and still is such administrator; that said Patterson at the commencement of this suit held and occupied all of said subdivisions Nos. 39 and 58 by himself as such administrator and by his tenants, to wit, said Thiele, Jursh, Parks, Devlin, Hurley, and Lawlor, by the license and permission of said Patterson as such administrator.

And these defendants deny that they or either of them, at the time of the commencement of this suit, were in possession of any portion of said lot number ten, other than the part thereof which is described in said second answer.

182 Seventh. And for other and separate answer to said complaint these defendants allege that on the 15th day of April, 1868, said plaintiff commenced a suit commonly called an action in ejectment, in the district court of the fifteenth judicial district of the State of California, in and for the city and county of San Francisco, against Miller & Co., T. Miller, E. C. Kirby, John Pennyman, John Penniman, Mary Roe Conrad, John Shultz, John Schults, Thos. O'Brien, Thos. O'Brian, Hanna Ward, Morris Michels, Margaret Burk, John Murphy, Mrs. Brown, Mary Brown, John Doe Brown, H. Rosenbaum, Jane Cox, Robert Brown, John Brown, Angus Leslie, Mary Leslie, R. W. Roland, Amanda E. Whitford, Salvator Marcelini, Chas. Laurence, John Williams, J. A. Caldwell, August Brandt, John Benson, John Maloney, Jacob Schmidt, D. Harris, John Burk, Patrick Burns, Bridget Bardon, Henry Cheno, Mrs. S. Simpson, John Eyre, Martha Crump, Henry Peterson, James Hogan, James Hagan, Olphant, Oliphant, C. McQuade, Wm. Parker, John Cleary, Jane Quirk, Lewis Branig, Margaret Foley, August Bausch, Barnard O'Farrell, Michael Reynolds, Simon Rum-

183 ley, Frederickson, Hans Smith, Champagne Charlie, Coal Oil Tommy, Patrick from Cork, Michael from Tipperary, John Doe, Richard Roe, John Doe, jr., Richard Roe, jr., John Doe, 2d, Richard Roe, 2d, John Doe, 3d, Richard Roe, 3d, for the recovery of said one hundred vara lot number ten.

That said defendants are and were respectively the defendants in this action, or the grantors or tenants respectively of these defendants. That in his complaint in said suit in said fifteenth district court, said plaintiff alleged that he was the owner in fee, and entitled to the possession of said lot number ten.

That the defendants therein respectively answered said complaint and respectively denied in their answers the alleged title and right of possession of said plaintiff therein to said lot, and respectively alleged ownership of the several portions thereof, claimed by each, in themselves respectively, or their lessors.

That such proceedings were thereupon had in said fifteenth district court that a trial of said action was had before the court without

184 a jury (a jury having been by counsel of the parties waived), on the 30th day of August, 1868, and on the said trial said plaintiff was nonsuited, and a judgment of nonsuit for said defendants therein was entered on the 2d day of September, 1868, in the said court.

That afterwards, in due time, on the 20th day of September, 1870, an appeal was taken in said cause by said plaintiff from said judgment of nonsuit of said district court to the supreme court of the State of California, the transcript on said appeal being duly prepared and filed in said supreme court, and that said cause and said appeal was at the time

of the commencement of this suit and still is pending in said supreme court, in no way affirmed, reversed, or decided.

Wherefore these defendants pray for judgment that the said alleged claim of plaintiff to said lot may be adjudged to be wholly void as against these defendants.

That said defendant Patterson, as such administrator, be decreed to be the owner and entitled to the possession of said part of said lot which is described in said second answer.

185 That plaintiff and his grantees and assigns be forever enjoined by the order of this court from claiming, or pretending to claim, and from bringing suit for the said portion of said lot, and that defendants have judgment for their costs of this suit.

A. CAMPBELL AND
CHAS. N. FOX,
Attorneys for said Defendants.

(Endorsed:)
Service of a copy of the within answer hereby admitted this first day of April, A. D. 1873.

WM. H. PATTERSON,
Attorney for Plaintiff.

Filed April 1st, A. D. 1873.

L. S. B. SAWYER, *Clerk*,
By J. F. O'BEIRNE, *Deputy Clerk.*

186 *Answer of M. P. Howe & others.*

In the circuit court of the United States in and for the district of California.

WILLIAM NEWTON MEEKS, PLAINTIFF,
vs.
FERDINAND VASSAULT, MAURICE DORÉ, AND others, defendants.

M. P. Howe, Thomas O'Brien, and Henry T. Cook, three of said defendants, for answer to the complaint filed in this cause, deny, and each for himself denies, every allegation, statement, matter and thing in said complaint contained.

Wherefore these defendants pray to be hence dismissed, with their costs of suit.

A. CAMPBELL AND
CHA'S N. FOX,
Att'ys for said Def'ts.

(Endorsed:) Service of a copy of the within answer hereby admitted the first day of April, A. D. 1873.

WM. H. PATTERSON,
Attorney for Plaintiff.

Filed 1st April, A. D. 1873.

L. S. B. SAWYER,
Clerk,
By J. F. O'BEIRNE,
Deputy Clerk.

187 *Answer of the Montgomery Street Real Estate Co.*

In the circuit court of the United States in and for the district of California.

WILLIAM NEWTON MEEKS, PLAINTIFF,
vs.
FERDINAND VASSAULT, MAURICE DORÉ, ET al., defendants.

Now come the "Montgomery Street Real Estate Company," defendants in the above-entitled action, and separately answer the complaint of the plaintiff, as follows:

First. These defendants deny each and every allegation in said complaint contained.

Second. For a further and separate answer and defense, these defendants deny each and every allegation in said complaint contained, excepting only the possession by these defendants of those certain tracts or parcels of land, being portions of one hundred vara lot number ten mentioned in said complaint, and bounded as follows:

188 I. Commencing at the corner formed by the intersection of the southeasterly line of Mission street with the southwesterly line of New Montgomery street; thence running southwesterly along the said southeasterly line of Mission street one hundred and seven feet; thence at right angles southeasterly eighty feet; thence at right angles northeasterly eleven feet; thence at right angles southeasterly eighty feet to the northwesterly line of Minna street; thence at right angles northeasterly and along the said northwesterly line of Minna street ninety-six feet to the said southwesterly line of New Montgomery street; and thence at right angles northwesterly and along said southwesterly line of New Montgomery street one hundred and sixty feet to the said southeasterly line of Mission street and the point of commencement.

II. Commencing at the corner formed by the intersection of the southeasterly line of Minna street with the southwesterly line of New Montgomery street; thence running southwesterly along the said southwesterly line of Minna street one hundred and two feet; thence at right angles southeasterly eighty feet; thence at right angles northeasterly one hundred and two feet to the said southwesterly
189 line of New Montgomery street; and thence at right angles northwesterly along said southwesterly line of New Montgomery street eighty feet to the said southeasterly line of Minna street and the point of commencement.

And these defendants aver that they were, at the commencement of this action, and had been for a long time prior thereto, and still are the owners and in possession of said tracts or parcels of land, but are not and never have been in possession, and do not and never did claim to be the owners of any other portion of said lot number ten.

Third. For a further and separate answer and defense, these defendants aver that they were at the commencement of this action, and had been for a long time prior thereto, and still are the owners and in possession of the several tracts or parcels of land particularly described in the second answer and defense hereinbefore set forth, said tracts or parcels of land being portions of one hundred vara lot number ten, mentioned in said complaint; and they further aver that they are not and never have been in possession, and do not and never did claim
190 to be the owners of any other portion of said lot number ten, and

they deny that on the first day of August, 1871, or at any other time, the plaintiff was the owner or seized in fee, or possessed of, or entitled to the possession of said tracts or parcels of land, or any or either of them, or any part thereof, and deny that on the second day of August, 1871, or at any other time, they wrongfully or unlawfully, or against the will of the plaintiff, entered upon said lot number ten, or any part thereof, or in any manner whatever ousted or ejected the plaintiff therefrom, and deny that they detain or withhold, or ever have detained or withheld from the plaintiff possession of said lot number ten, or any part thereof, except the tracts and parcels aforesaid.

Fourth. For a further and separate answer and defense, these defendants aver that neither the plaintiff nor any ancestor, predecessor, or grantor of the plaintiff, has been seized or possessed of said lot number ten mentioned in said complaint, or any part thereof, within five years next before the commencement of this action.

Fifth. For a further and separate answer and defense, these
191 defendants aver that neither the plaintiff nor any ancestor, predecessor, or grantor of the plaintiff, has been seized or possessed of the tracts or parcels of land particularly described in the second answer and defense hereinbefore set forth, or any or either of them, or any part thereof, within five years next before the commencement of this action, and that these defendants, and those under and through whom they claim, have been in the actual, quiet, peaceable, notorious, continued, and exclusive possession and occupation of said tracts or parcels of land for more than five years next before this action was commenced, under a claim of title thereto exclusive of any other right, and adversely to the plaintiff and all other persons.

Sixth. For a further and separate answer and defense, these defendants aver that said lot number ten mentioned in said complaint, was, on the seventh day of January, 1856, sold by Benjamin Aspinall, administrator of the estate of George Harlan, deceased, as the property of said estate; that the said Harlan died intestate on or about the 8th day of July,
1850, in the county of Santa Clara, where he then resided; and
192 that the said Aspinall was appointed administrator of his estate, and letters of administration thereon in due form of law were issued to him by and under an order of the probate court of said county in that behalf, duly given and made on the fifteenth day of June, 1855, said probate court being a court of competent jurisdiction in the premises.

That said letters of administration were issued to the said Aspinall on said last-mentioned day, and that he then and there duly qualified and entered upon the discharge of his duties as such administrator, and became and was the acting and lawful administrator of said estate, and continued to be such administrator for more than seven years thereafter; that said lot number ten was sold as aforesaid under an order of the said probate court in that behalf, duly given and made on the tenth day of November, 1855, and that the same was sold at public auction in parcels to different purchasers for the full value thereof, who then and there paid to the said Aspinall the amount of their respective purchases.

That afterwards, and before the thirteenth day of February, 1856,
the said probate court, by its order and judgment duly given and
193 made, confirmed said sale and directed the said Aspinall, as administrator as aforesaid, to execute deeds of conveyance to the purchasers thereat; and that on said last-mentioned day he executed

and delivered such deeds, and thereby conveyed to the several purchasers the parcels purchased by them respectively.

That said sale was made under the provisions of chapter seven of an act of the legislature of this State, entitled "An act to regulate the settlement of the estate of deceased persons," approved May 1st, 1851; and that the orders and judgments aforesaid were duly given and made, under and in pursuance of said act; that the plaintiff claims said lot number ten, and the title thereto under the heirs of the said George Harlan, and not otherwise, and that none of said heirs were purchasers at said sale; that the tracts or parcels of land described in the second answer and defense hereinbefore set forth were sold at said sale, and conveyed as aforesaid to the purchasers thereof; and that afterwards, and before the commencement of this action, said purchasers con-
194 veyed the same by good and sufficient deeds of conveyance to these defendants, and those under whom they claim; that ever since said sale, and for more than fifteen years next before the commencement of this action, these defendants and their grantors and those under whom they claim, were and have been in the actual, open, notorious, continued and exclusive possession of said tracts or parcels of land, claiming title thereto, adversely to the plaintiff and all other persons, and that before this action was commenced these defendants acquired by regular deeds of conveyance all the right, title and interest of the purchasers at said sale, in and to said tracts or parcels of land.

And these defendants further aver, that this action was not commenced within three years next after said sale, and that neither the plaintiff nor any person under whom he claims was a minor, or under any legal disability to sue, at the time when the cause of action first accrued, or at any time within three years next before the commencement of this action.

And these defendants further aver, that the cause of action is
195 now, and was at and before the commencement of this action, barred by the provisions of section one hundred and ninety of the act of the legislature aforesaid, and of section fifteen hundred and seventy-three of the code of civil procedure of this State.

Seventh. For a further and separate answer and defense, these defendants aver that this action was brought to recover property sold by an administrator, under the provisions of chapter seven of an act of the legislature of this State, entitled "An act to regulate the settlement of the estates of deceased persons," approved May 1st, 1851, and that the same was sold as property belonging to the estate of George Harlan, deceased; that the plaintiff claims said property under the heirs of the said Harlan, and not otherwise, and seeks to recover the same by reason of the supposed invalidity of said sale.

And these defendants further aver, that this action was not commenced within three years next after said sale, and that neither the plaintiff nor any person under whom he claims was a minor, or un-
196 der any legal disability to sue, at the time when the cause of action first accrued, or at any time within three years next before the commencement of this action.

And these defendants further aver, that the cause of action is now, and was at and before the commencement of this action, barred by the provisions of section one hundred and ninety of the act of the legislature aforesaid, and of section fifteen hundred and seventy-three of "The code of civil procedure of this State."

Eighth. For a further and separate answer and defense, these defendants aver, that on the thirty-first day of May, 1859, the plaintiff

commenced an action in the district court of the twelfth judicial district of this State, in and for the city and county of San Francisco, against Jacob Hahn and a large number of other defendants, to recover possession of said lot number ten, said court having full jurisdiction in the premises; that in his complaint in said action, the plaintiff alleged that he was the owner of said lot number ten, and claimed the
197 possession of said lot from the defendants therein, by reason of said alleged ownership, and that said defendants severally answered said complaint, and by their answers denied that the plaintiff was the owner of said lot or any part thereof, and set up title in themselves.

That such proceedings were afterwards had, that on the twelfth day of December, 1860, said action was tried by the court and a jury upon the issues made by the pleadings as aforesaid, and that after the introduction of evidence, the jury rendered a verdict in favor of the defendants, which verdict was duly recorded in the proper minutes and records of said court; that a judgment was thereupon entered by the court on said verdict, adjudging and decreeing that the plaintiff take nothing by his said action, and that the defendants have and recover of the plaintiff their costs, which judgment is still in full force and effect; that the plaintiff has not since the commencement of said action acquired any other or further title to said lot or any part thereof, and that these defendants, the "Montgomery Street Real Estate Company," have since acquired by good and sufficient conveyances the title of the de-
198 fendants in said action to said tracts or parcels of land—portions of said lot—particularly described in the second answer and defense hereinbefore set forth, and these defendants rely upon said judgment as estopping and precluding the plaintiff from claiming or asserting any title or right of possession to said tracts or parcels of land or any or either of them or any part thereof.

Ninth. For a further and separate answer and defense, these defendants aver that on the fifteenth day of April, 1868, the plaintiff commenced an action in the district court of the fifteenth judicial district of this State, in and for the city and county of San Francisco, against E. C. Kirby and a large number of other defendants, to recover possession of said lot number ten, and that in his complaint in said action the plaintiff alleged that he was the owner and entitled to the possession of said lot.

That the defendants in said action respectively answered said complaint, and by their answers denied that the plaintiff was the owner or entitled to the possession of said lot or any part thereof, and
199 set up title in themselves; that on the thirtieth day of August, 1868, said action was tried before the court upon the issues therein as aforesaid, and that on said trial a judgment of nonsuit was rendered against the plaintiff, which judgment was duly entered on the second day of September, 1868.

That said court had full jurisdiction in the premises, and that said judgment was rendered after all the evidence in support of the title of the plaintiff had been introducedand submitted; that on the twentieth day of September, 1868, the plaintiff appealed from said judgment to the supreme court of this State, and that said appeal is now pending and undetermined in the said supreme court; that the defendants in said action, and also defendants in this action, or the grantors or tenants of the defendants herein, and that the plaintiff has not since the commencement of said action acquired any other or further title or right of possession in or to said lot or any part thereof.

Tenth. For a further and separate answer and defense, these
200 defendants aver that several causes of action are united in said complaint, and are not separately stated therein, and that said several causes of action do not affect all the parties to the action; that for more than twenty years last past said lot number ten has been divided into several distinct parcels, separated from each other by open and public streets of the city and county of San Francisco, and that at the time of the commencement of this action, and for a long time prior thereto and ever since, each of said parcels was and has been occupied and possessed in severalty by different persons who are defendants herein.

Eleventh. For a further and separate answer and defense, these defendants aver that several causes of action are united in said complaint, and that said causes of action are not separately stated therein and do not affect all the parties to the action; that these defendants are now, and were at the commencement of this action, in the exclusive occupation and possession of the tracts or parcels of land particularly described in the second answer and defense hereinbefore set forth,
201 but are not and never have been in the occupation or possession, and never entered upon any other portion of said lot number ten.

That said tracts or parcels of land so occupied and possessed by these defendants were, at and before the commencement of this action, and ever since have been, separated from each other by an open and public street of the city and county of San Francisco, known as Minna street, one of said tracts or parcels being on the southeasterly side of said street and the other on the northwesterly side thereof, and that said tracts or parcels of land then were, and still are, separated by said street from other portions of said lot in the exclusive occupation and possession of others of the defendants herein; that said street is the property of said city and county, and for more than twenty years last past has been dedicated to public use and continuously used by the public as a street, and that said street runs through said lot and divides the same into separate and distinct parcels, none of which have ever been occupied,
202 entered upon, or possessed by the defendants jointly.

Wherefore these defendants pray to be hence dismissed with their costs.

S. M. WILSON,
Attorney for the Montgomery Street Real Estate Company.

W. W. COPE, *of Counsel.*

(Endorsed:)
Service of a copy admitted this 1st day of April, 1873.
WM. H. PATTERSON,
Att'y for Pl'ff.

Filed 1 April, 1873.
L. S. B. SAWYER, *Clerk.*

Answer of Maurice Doré.

203 In the circuit court of the United States in and for the district of California.

WILLIAM NEWTON MEEKS, PLAINTIFF,
vs.
FERDINAND VASSAULT, MAURICE DORÉ, ET al., defendants.

Now comes Maurice Doré, one of the defendants in the above-entitled action, and separately answers the complaint of the plaintiff as follows:

First. This defendant denies each and every allegation in said complaint contained.

Second. For a further and separate answer and defense this defendant avers that on the second day of January, 1872, one Edward C. Kirby was the owner and in possession of that certain tract or parcel of land, being a portion of one hundred vara lot number ten, mentioned in said complaint, and bounded as follows:

Commencing at a point on the southeasterly line of Minna street,
204 distant forty-two feet southwesterly from the southwesterly line of New Montgomery street, and running thence southwesterly along said line of Minna street sixty feet, thence at right angles southeasterly eighty feet, thence at right angles northeasterly sixty feet, and thence at right angles northwesterly eighty feet to the point of commencement.

And this defendant further avers that on said day the said Edward C. Kirby, being the owner and in possession as aforesaid, conveyed said tract or parcel of land by a good and sufficient deed to this defendant, who received said deed and the title thereby conveyed and has ever since held the same in trust for the "Montgomery Street Real Estate Company," one of the defendants herein; that immediately upon the execution of said deed the said "Montgomery Street Real Estate Company" entered upon and took possession of said tract or parcel of land, and has ever since remained in possession thereof; that this defendant never entered upon and has never been in possession of said lot number ten, or any part thereof, and that he has never claimed or asserted and
205 hereby disclaims any right or title to any portion of said lot except the tract or parcel aforesaid.

And this defendant denies each and every allegation in said complaint contained to the contrary hereof.

Third. For a further and separate answer and defense, this defendant avers that neither the plaintiff nor any ancestor, predecessor, or grantor of the plaintiff has been seized or possessed of said lot number ten, mentioned in said complaint, or any part thereof, within five years next before the commencement of this action.

Fourth. For a further and separate *ancestor* and defense, this defendant avers that neither the plaintiff nor any ancestor, predecessor, or grantor of the plaintiff, has been seized or possessed of the tract or parcel of land particularly described in the second answer and defense hereinbefore set forth, or any part thereof, within five years next before the commencement of this action, and that this defendant and his grantors, and those under whom he claims, have been in the actual, quiet, peaceable, notorious, continued, and exclusive pos-
206 session of said tract or parcel of land for more than five years next before this action was commenced, holding and claiming the same adversely to the plaintiff and all other persons.

Fifth. For a further and separate answer and defense, this defendant avers that said lot number ten, mentioned in said complaint, was, on the seventh day of January, 1856, sold by Benjamin Aspinall, administrator of the estate of George Harlan, deceased, as the property of said estate; that the said Harlan died intestate on or about the eighth day of July, 1850, in the county of Santa Clara, where he then resided, and that the said Aspinall was appointed administrator of his estate, and letters of administration thereon in due form of law were issued to him by and under an order of the probate court of said county in that behalf, duly given and made on the fifteenth day of June, 1855, said probate court being a court of competent jurisdiction in the premises.

That said letters of administration were issued to the said As-
207 pinall on said last-mentioned day, and that he then and there duly qualified and entered upon the discharge of his duties as such administrator, and became and was the acting and lawful administrator of said estate, and continued to be such administrator for more than seven years thereafter; that said lot number ten was sold as aforesaid under an order of the said probate court in that behalf duly given and made on the tenth day of November, 1855, and that the same was sold at public auction in parcels to different purchasers for the full value thereof, who then and there paid to the said Aspinall the amount of their respective purchasers.

That after and before the thirteenth day of February, 1856, the said probate court by its order and judgment, duly given and made, confirmed said sale and directed the said Aspinall, as administrator as aforesaid, to execute deeds of conveyance to the purchasers thereat, and that on said last-mentioned day he executed and delivered such deeds, and thereby conveyed to the several purchasers the parcels purchased by them respectively; that said sale was made under the provis-
208 ions of chapter seven of an act of the legislature of this State, entitled "An act to regulate the settlement of the estates of deceased persons," approved May 1st, 1851, and that the orders and judgments aforesaid were duly given and made under and in pursuance of said act; that the plaintiff claims said lot number ten and the title thereto under the heirs of the said George Harlan, and not otherwise, and that none of said heirs were purchasers at said sale; that the tract or parcel of land particularly described in the second answer and defense hereinbefore set forth was sold at said sale, and conveyed as aforesaid to the purchasers thereof, and that afterwards and before the commencement of this action said purchasers conveyed the same, by good and sufficient deeds of conveyance, to this defendant and those under whom he claims; that ever since said sale, and for more than fifteen years next before the commencement of this action, this defendant and his grantors and those under whom he claims were and have been in the actual, open, notorious, continued, and exclusive possession
209 of said tract or parcel of land, holding and claiming the same adversely to the plaintiff and all other persons, and that before this action was commenced this defendant acquired, by regular deeds of conveyance, all the right, title, and interest of the purchasers at said sale in and to said tract or parcel of land.

And this defendant further avers that this action was not commenced within three years next after said sale, and that neither the plaintiff nor any person under whom he claims was a minor or under any legal disability to sue at the time when the cause of action first accrued, or at any time within three years next before the commencement of this action.

Sixth. For a further and separate answer and defense, this defendant avers that this action was brought to recover property sold by an administrator under the provisions of chapter seven of an act of the legislature of this State, entitled "An act to regulate the settlement of the estates of deceased persons," approved May 1st, 1851, and that the same was sold as property belonging to the estate of George Harlan,
210 deceased; that the plaintiff claims said property under the heirs of said Harlan, and not otherwise, and seeks to recover the same by reason of the supposed invalidity of said sale.

And this defendant further avers that the action was not commenced within three years next after said sale, and that neither the plaintiff

nor any person under whom he claims was a minor or under any legal disability to sue at the time when the cause of action first accrued, or at any time within three years next before the commencement of this action.

Seventh. For a further and separate answer and defense, this defendant avers that on the thirty-first day of August, 1859, the plaintiff commenced an action in the district court of the twelfth judicial district of this State in and for the city and county of San Francisco, against Jacob Hahn and a large number of other defendants, to recover possession of said lot number ten, said court having full jurisdiction in the premises; that in his complaint in said action, the plaintiff alleged that he was the owner of said lot, and claimed the possession thereof
211 from the defendants by reason of his said alleged ownership, and that the defendants severally answered said complaint and by their answers denied that the plaintiff was the owner of said lot or any part thereof, and set up title in themselves.

That on the twelfth day of December, 1860, said action was tried by the court and a jury upon the issues made by the pleadings as aforesaid, and that after the introduction of evidence the jury rendered a verdict in favor of the defendants, which verdict was duly recorded in the proper minutes and records of said court; that a judgment was thereupon entered by the court on said verdict adjudging and decreeing that the plaintiff take nothing by his said action, and that the defendants have and recover of the plaintiff their costs, which judgment is still in full force and effect; that the plaintiff has not since the commencement of said action acquired any other or further title to said lot or any part thereof, and that this defendant has since acquired by good and sufficient conveyances the title of the defendants in said action
212 to said tract or parcel of land particularly described in the second answer and defense hereinfore set forth, and this defendant relies upon said judgment as estopping and precluding the plaintiff from claiming or asserting any title or right of possession in or to said tract or parcel of land or any part thereof.

Eighth. For a further and separate answer and defense, this defendant avers that on the fifteenth day of April, 1868, the plaintiff commenced an action in the district court of the fifteenth judicial district of this State, in and for the city and county of San Francisco, against E. C. Kirby and a large number of other defendants, to recover possession of said lot number ten, and that in his complaint in said action the plaintiff alleged that he was the owner and entitled to the possession of said lot; that the defendants in said action respectively answered said complaint, and by their answers denied that the plaintiff was the owner or entitled to the possession of said lot or any part thereof and set up title in themselves; that on the thirtieth day of August, 1868, said ac-
213 tion was tried before the court upon the issues therein as aforesaid, and that on said trial a judgment of nonsuit was rendered against the plaintiff, which judgment was duly entered on the second day of September, 1868; that said court had full jurisdiction in the premises, and that said judgment was rendered after all the evidence in support of the title of the plaintiff had been introduced and submitted.

That on the twentieth day of September, 1868, the plaintiff appealed from said judgment to the supreme court of this State, and that said appeal is now pending and undetermined in the said supreme court; that the defendants in said action are also defendants in this action, or the grantors or tenants of the defendants herein, and that the plaintiff has

not, since the commencement of said action, acquired any other or further title or right of possession in or to said lot or any part thereof.

Ninth. For further and separate answer and defense, this defendant avers that several causes of action are united in said complaint, and that said causes of action are not separately stated therein, and do not
214 affect all the parties to the action; that for more than twenty years last past said lot number ten has been divided into several distinct parcels, separated from each other by open and public streets of the city and county of San Francisco, and that at the time of the commencement of this action, and for a long time prior thereto, and ever since, each of said parcels was and has been occupied and possessed in severalty by different persons who are defendants herein; that this defendant is not affected by the action, except as to the tract or parcel of land particularly described in the second answer and defense hereinbefore set forth, and that others of the defendants are not affected by the action, except as to other portions of said lot respectively occupied and possessed by them in severalty as aforesaid.

Wherefore this defendant prays to be hence dismissed with his costs.

S. M. WILSON,
Attorney for Maurice Doré.

W. W. COPE, *of Counsel.*

215 (Endorsed:)

Service of a copy of the within admitted this 1st day of April, 1873.

WM. H. PATTERSON,
Attorney for Plaintiff.

Filed 1 April, 1873.

L. S. B. SAWYER, *Clerk.*

216 *Findings.*

United States circuit court, ninth circuit, State of California.

WILLIAM N. MEEKS, PLAINTIFF,
vs.
FERDINAND VASSAULT ET AL., DEFENDANTS.

Findings.

By stipulation duly filed and order duly entered, a jury trial was waived in the above-entitled cause, and the issues tried by the court without a jury, Wm. H. Patterson, esq., appearing for the plaintiff, and S. M. Wilson and Alexander Campbell, esq'r's, for defendants.

And the court, being sufficiently advised, now finds the following facts and conclusions of law:

I.

The demanded premises are situated within that portion of the city and county of San Francisco, State aforesaid, described in §2 of "An act to incorporate the city of San Francisco," passed April 15, 1851 (see session laws of California for 1851, page 357, chap. 84), and
217 were designated on the plat of said city, and known as one hundred vara lot number 10, of the 100 vara survey south of Market street.

II.

The several defendants were respectively in possession of the respective portions of the demanded premises described in their several answers at the commencement of this action.

III.

On the 14th day of January, 1847, George Hyde, the then alcalde of San Francisco, made and delivered to J. G. D. Dunleavy a grant, in the usual form, of the demanded premises, purporting to grant the same in fee. This grant was on the same day recorded in a book of records kept by the said alcalde, designated and known as book "A" of alcalde's records.

At the time of making said grant, said alcalde placed said Dunleavy in possession of said premises.

IV.

On June 2, 1847, said Dunleavy, for a money consideration, conveyed said premises to George Harlan, under whom plaintiff and defendants respectively claim.

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V.

Said city and county of San Francisco is a corporation and the successor in interest of the city of San Francisco and of the pueblo of San Francisco. The claim of said city for four leagues of land was presented to the board of United States land commissioners, pursuant to the act of Congress of March 3, 1851, "To ascertain and settle private land-claims in California." Said claim was confirmed to the extent of the corporate limit of said city by a decree of the United States circuit court on the 8th day of March, 1866. Said lot is within the lands so confirmed, and lies to the westward of and above high-water mark; also within the boundaries mentioned in an ordinance of the city of San Francisco, commonly called the Van Ness ordinance, and of a statute of the State of California confirming said ordinance, and entitled "An act concerning the city of San Francisco, and to ratify and confirm certain ordinances of the common council of said city," approved April 11, 1858 (Stats. 1858, 53), and also within the boundaries mentioned in an act of Con-
219 gress, approved July 1, 1864, and entitled "An act to expedite the settlement of titles to lands in the State of California" (13 Stat. U. S., 333, sec. 5), and is not within any of the exceptions or reservations mentioned in the said decree of confirmation or said statute of the United States.

VI.

The lands so finally confirmed to said city of San Francisco by said decree of this court have not been finally surveyed by the United States, under the act of Congress, entitled "An act to ascertain and settle the private land-claims in the State of California," approved March 3, 1871, nor under any act supplementary thereto or amendatory thereof.

VII.

Said George Harlan died intestate on the 8th day of July, eighteen

hundred and fifty, in the county of Santa Clara, in said State, of which county he was, at and just prior to his death, a resident.

VIII.

Said George Harlan never made any conveyance of the demanded premises. And at the time of his decease he was seized of all the
220 estate in said premises acquired under and by virtue of said alcalde's grant, and of the possession taken thereunder and of said conveyance from said Dunleavy.

IX.

At the time of the death of George Harlan, plaintiff, by himself and his tenants, was, and had been for some months prior thereto, in the actual possession of the demanded premises.

X.

Said George Harlan left him surviving a widow, Catherine, and the following children, viz: Joel Harlan, Elisha Harlan, George Harlan, Mary Smith, then and now the wife of Henry C. Smith; Nancy Huff, then the wife of Lucien B. Huff; Sarah Ann, afterwards married to James H. Farley; and two grandchildren, Jerome and George Van Gordon, issue of a deceased daughter.

Said Joel, Elisha, Catherine, and Mary Smith were of lawful age at the time of the death of the said George.

Said George Harlan did not come of age until within three years next before the commencement of this action.

Said Jerome Van Gordon became of age on or prior to July 8, 1869.

Said George Van Gordon became of age prior to July 8, 1866.

221 XI.

Between April 6th and April 26th, 1854, said Catherine, Joel, Elisha, Mary Smith, and Henry C. Smith, her husband, by conveyance duly signed, sealed, delivered, acknowledged, and duly recorded prior to the alleged sale in these findings mentioned and referred to, conveyed to plaintiff all their estate in the demanded premises.

On the 23d day of October, 1869, said Jerome and George Van Gordon duly conveyed to plaintiff all their estate and interest in the demanded premises.

On April 21, 1854, said Nancy, and her husband, Lucien B. Huff, conveyed their interest in said premises to said plaintiff, and never during the lifetime of said Nancy disaffirmed said conveyance. Said Nancy attained full legal age on May 10, 1854, and died in November or December, 1856.

On the 4th day of November, 1869, said George Harlan conveyed the demanded premises to plaintiff.

On October 23d, 1869, said Sarah Ann and her husband, James H. Farley, conveyed the demanded premises to the plaintiff, and by
222 virtue of said several conveyances and before the commencement of this action, he became vested with all the right, title, and interest of all the heirs of said Harlan, held by them at the dates of their said respective conveyances, no prior conveyances having been made by them.

Plaintiff has not conveyed the demanded premises nor any part thereof.

XII.

On the 19th day of August, 1850, letters of administration upon the estate of George Harlan, deceased, were issued by the probate court of Santa Clara County, aforesaid, to Henry C. Smith, who qualified and acted as such administrator.

XIII.

During the time that said Henry C. Smith acted as such administrator there came to his hands sufficient money and personal property belonging to the said estate to have paid all the debts and liabilities against the estate.

Said Smith did not pay the same, but converted such moneys, &c., to his own use. Without having settled his account as administrator, as aforesaid, and without having accounted for all the personalty which came to his hands belonging to the estate, said Smith tendered
223 his resignation as such administrator to probate court, by an instrument in writing, filed in said court, in the words following, to wit:

Henry C. Smith, administrator of the estate of George Harlan, deceased, hereby resigns his appointment as such administrator, and also asks that his resignation be received, and he be discharged therefrom.

H. C. SMITH.

And, thereupon, on the 31st day of December, 1853, said probate court made an order, as follows:

In the matter of the estate of George Harlan, deceased. Dec. 31, 1853.

Now comes Henry C. Smith, administrator of the above estate, and files his resignation as administrator of said estate. It is therefore ordered by the court that the said Henry C. Smith do turn over to John Youtz, public administrator in and for the county of Santa Clara, all the papers and effects in his possession relating to said estate, and that he make a full and complete settlement of all his proceedings re-
224 lating to said estate to the said John Youtz, public administrator as aforesaid, on or before the first day of the next term of this court, and that when the said Henry C. Smith has fully made such settlement he and his sureties be released from any further liability on said estate.

It is further ordered by the court that said estate be placed in the hands of said John Youtz, public administrator in and for the county of Santa Clara, for purposes of general administration.

XIV.

No acceptance having been made of the resignation of said Smith, other than as found in said order set out in the last finding, and no final settlement of his accounts having been made, on the 18th day of May, 1855, Benjamin Aspinall petitioned said probate court to be appointed administrator of the estate of said George Harlan, deceased.

Such proceedings were had upon said petition that in pursuance of the prayer thereof, on June 15th, 1855, said Aspinall was appointed administrator of said estate, and letters in due form were issued to
225 him by said court, and he thereupon duly qualified and acted, and was recognized by said court as such until he resigned, as hereafter stated.

XV.

On the 25th day of August, 1855, said Aspinwall, acting as administrator, under and by virtue of said appointment and no other, presented to said probate court a petition in the words and figures following:

In probate court for the county of Santa Clara. In the matter of the estate of George Harlan, deceased.

To the honorable the probate judge of said court:

The petition of Benjamin Aspinall respectfully shows that he was duly appointed administrator de bonis non of all and singular the goods, chattels, and effects of George Harlan, formerly of the county of Santa Clara, deceased, on the eighth day of August, 1855.

That said estate has heretofore been partially administered by Henry Smith, whose time of administration has wholly ceased, that no personal estate has come to the hands of your petitioner, nor is there any
226 personal property to the best knowledge of your petitioner, the said Smith, as such former administrator, having disposed of the whole of the same. Your petitioner further shows that the following described real estate, lying and being in the city of San Francisco, belongs to and is the property of said estate, viz:

That certain one hundred vara lot, numbered on the official map of the said city ten, and located on the South side of Mission street, between Second and Third streets, of the value of about eight thousand dollars; also, the following lot, to wit, commencing at the northwest corner of the fifty vara lot numbered on the official map of the city of San Francisco three hundred and seventy-three, thence running easterly, on the northerly line of said fifty vara lot, fifty-eight feet nine inches; thence southerly, on the westerly line of Union Place, thirty-six feet; thence westerly at right angles thirty-five feet nine inches; thence southerly at right angles forty-one feet nine inches; thence westerly at right angles twenty-three feet; thence northerly at right angles seventy-seven feet six inches, to the point of beginning, of the value of about four hundred dollars.

227 Petitioner further shows that he formerly received a judgment against the said estate in the district court of the State of California for the county of Santa Clara for about the sum of $8,000, as near as he can recollect.

That said Smith, as administrator of said estate, has made two separate payments to your petitioner on said judgments, amounting to about the sum of $3,500.

Petitioner avers that there was due to him from said estate, on said judgment-claim, the sum of five thousand three hundred and five dollars and fifty-seven cents, on the nineteenth day of January, A. D. 1855, and that he is entitled to interest thereon from that date at the rate of ten per cent. per annum.

That he has made every effort in his power to collect and recover said amount from the said Smith, as administrator, from said estate, and

from the sureties on the administration bond of said Smith, but without avail or success.

Petitioner further saith that he is informed that one Joel Harlan, one of the heirs of the said deceased, has a claim against said estate, but of the amount or truth thereof your petitioner is not advised, and refers
228 to the records of the said probate court, and to the proofs henceforth to be introduced in respect to the same, if necessary; that there are no other claims or demands against said estate to the knowledge of your petitioner.

And further shows that the following persons are the only heirs and next of kin of said deceased, to the knowledge of petitioner, namely, Mary Smith, daughter of the said deceased, wife of Henry Smith, of Alameda County; Joel Harlan (son), of Alameda County; Nancy Huff (daughter), wife of Lucius Huff, of Alameda County; Jerome Van Gorden and George Van Gorden, children under the age of twenty-one years of Rebecca, daughter of said deceased, and wife of Ira Van Gorden, said Rebecca being dead, of Los Angeles County; George Harlan, Elisha Harlan, and Sarah Ann Harlan, minors under the age of twenty-one years, sons and daughters of the said deceased, said Elisha residing in Alameda County, said George and Sarah in Napa Valley. Your petitioner is informed and believes that said Joel Harlan is the general guardian of the said Elisha Harlan, but that he cannot ascertain
229 that any guardian has been appointed for the other minor heirs and next of kin.

Petitioner further shows that it is necessary to sell the whole or part of said real estate to pay the debts of your said petitioner and any other debt or debts that may be due and owing from said estate when the same can be ascertained, that he has no other mode or means of recovering the same or any part thereof.

Therefore your petitioner prays for the aid of this court in the premises, and that proceedings may be had and an order made, pursuant to the statute in such case made and provided, for the sale of the whole or so much of the aforesaid real estate as may be sufficient to pay the debt of your petitioner, and such other debts, if any there be, against said estate, and that for such minor heirs or next of kin of said deceased as have no guardian suitable persons may be appointed guardian or guardians to take care of their interests in the premises; and your petitioner will ever pray.

BENJAMIN ASPINWALL,
Administrator.

230 Which petition was duly verified.

Said petition was the only petition ever presented to the said probate court praying for a sale of the demanded premises.

XVI.

After due notice given on November 10, 1855, an "order of sale," founded upon said petition, was made by said probate court, which order s in the words and figures following, to wit:

In the matter of the estate of George Harlan, deceased.

And now again comes Benjamin Aspinwall, administrator de bonis non of the above estate, by his attorney, L. Archer, and again presents to the court his petition heretofore filed herein, praying for an order and de-

cree of this court to sell a portion of the real property belonging to said estate. Also comes the attorney for the absent and minor heirs, and the objections filed by said attorney to the granting of said petition for a sale of real property having been taken under advisement, and the court now here having considered the matter therein contained, and being sufficiently informed therein, overrules said objections, and
231 it being proved to the satisfaction of the court that due notice of the said petition, and of the time and place of hearing the same, had been given as required by law, the court now proceeds to hear and determine the matter in said petition contained; and the proofs and allegations being heard, and the court being fully satisfied from the same that a sale of the following described property, to wit (here follows a description of the two parcels described in the petition for the rule in the same language as that used to describe them in the petition), is necessary to pay the debts outstanding against said estate, it is therefore ordered and decreed by the court that the said administrator, Benjamin Aspinwall, do, after giving a good and sufficient bond, as required by law, in the penalty of eight thousand dollars, proceed according to law to sell to the highest and best bidder for cash in hand the above described real property, as follows: The one hundred vara lot numbered ten to be sold in lots of twenty-five by fifty varas, and the remainder of the property in such parcels or parcel as to the said administrator may seem best for the interests of said estate. And it is further or-
232 dered by the court that said administrator, before proceeding to sell the said property in accordance with this order, do give due and lawful notice of the time, place, and terms of said sale, and also a description of the property to be sold, by publishing the same for at least six weeks next preceding the day set for the sale in the San Francisco Daily Herald, a newspaper published daily in the said city of San Francisco, and also by posting notices thereof in three of the most public places in the county of San Francisco, said notices to describe the property to be sold with common certainty.

XVII.

Under said "order of sale," and not otherwise, and upon due notice given, said Aspinwall, acting as administrator under the appointment as aforesaid, and no other, on January 7, 1856, made a sale of the demanded premises in thirty-two parcels or subdivisions, to the several defendants and their several grantors, reported said sale to said probate court, by which the same was confirmed in due form, and conveyance directed to be executed to the purchasers, and in pursuance of such directions, on the 13th day of February, 1856, the sums bid having been paid, conveyances of the demanded premises in such parcels or
233 subdivisions were made to the respective purchasers thereof in due form, and from the date last mentioned defendants and their grantors (purchasers at said sale) either entered into possession or being already in possession continued in such possession, and they have been and ever since remained in the actual, exclusive, adverse, and notorious possession of the demanded premises, claiming the same adversely to all the world under said sale and deeds of conveyance, exclusive of any other right.

XVIII.

Said Aspinwall continued to act as such administrator until the 12th

day of May, 1864, when on citation and rendering of his final account, and on settlement, allowance, and confirmation of same in said probate court, it was ordered and decreed that said Aspinwall, as such administrator, and his sureties on his bond, be and they and each of them were discharged, and shortly thereafter, on the 12th day of May, 1864, said Joel Harlan and Lucien B. Huff were appointed administrators of said estate of George Harlan. Letters of administration having been issued to them they qualified and entered upon their duties as adminis-
234 trators, and are still acting as such. Administration on said estate has not been finally closed and is still pending.

XIX.

The proceedings relating to the sale of the demanded premises by said Aspinwall, as such administrator, are the same proceedings referred to in Meeks vs. Hahn (20th California, 620; 10th California, 119), and Haynes vs. Meeks (20th California, 288).

XX.

On the 16th day of October, 1869, the plaintiff filed in said probate court his petition, as follows:

Probate court, Santa Clara County.

In the matter of the estate of George Harlan, deceased.

To the honorable the probate court of the county of Santa Clara, in the State of California:

The petition of Wm. Newton Meeks respectfully shows:

1st. That on the 12th day of May, 1864, Joel Harlan and Lucien B. Huff were duly appointed and qualified, and have since acted as
235 administrators of the property unadministered of the estate of George Harlan, deceased, late of said county.

2nd. That no debts or claims have been presented to them, or either of them, as such administrators, against the estate of said deceased, and none exist.

3rd. That no personal property or choses in action or mixed estate or money ever came to their hands as such administrators, nor have they or either of them been able to learn of any belonging to said estate, and upon the best information they have, and your petitioner has been able to obtain, and upon his belief petitioner avers that there was no such choses in action or personal property or mixed estate belonging at the time of their appointment, or at any time since, of the estate of said deceased.

4th. That at the time of their appointment and qualification as such administrators they believed and were subsequently advised by Clark & Carpentier, esqs., attorneys and counsellers at law, of the city and county of San Francisco, and other counsel learned in the law, that the estate was, and said administrators as aforesaid were entitled to recover in any action of ejectment lot number ten (10) of the one
236 hundred vara survey of the city and county of San Francisco, situate on Mission street, and portions of fifty vara lots numbers two hundred and ninety-two and two hundred and ninety-one fronting on Bush, Dupont, and Sutter streets in said city and county.

That being so advised, and acting in good faith as your petitioner be-

lieves, said administrators brought two actions of ejectment in the honorable the district court of the fifteenth judicial district in and for said city and county, the one entitled Joel Harlan and Lucien B. Huff, administrators, &c., vs. Lewis Peck and others, and the other the same plaintiffs vs. Miller et al., and prosecuted the same diligently.

In both said actions the judgment of the said district court was to the effect that plaintiffs recover against the occupants of said premises and their respective landlords the said lands and premises, and damages for the detention thereof and costs.

That defendants in said action duly perfected an appeal to the supreme court of this State from such judgments respectively; that said supreme court reversed said judgments in all things, and deliv-
237 ered opinions, which are reported in 33d California Reports, page 515; that upon the coming down of the remittitur of the supreme court in said action the said causes were again placed on the calendar of said district court for trial, and on being reached were again tried and judgments rendered therein in accordance with said opinions, to the effect in the case of Harlan et al. vs. Miller et als., for said one hundred vara lot number ten, that the said plaintiffs as such administrators take nothing by said action, and in said action of Harlan et al., administrator, &c., vs. Lewis Peck et al., the defendants having made their answer a cross-bill, the court rendered judgment that defendants were the owners of said two fifty vara lots, and that the estate of their intestate had no estate therein.

That said administrators were thereupon advised by their said counsel, Clarke & Carpentier, esqs., that it was not advisable to appeal from said last-mentioned decision and judgment.

That prior to the appointment of said administrators as aforesaid, the heirs at law of said George Harlan, deceased, conveyed said one
238 hundred vara lot number ten (10) to petitioner, William Newton Meeks, who now remains the owner of all such title and estate as said heirs could convey.

Wherefore the said petitioner prays that lot number ten (10) be distributed to said William Newton Meeks, and that he, said Meeks, be adjudged and declared to be the owner thereof, upon his giving bonds, with security, for the payment of his proportion of the debts of the said estate.

(Signed) WM. NEWTON MEEKS,
By WM. H. PATTERSON AND
E. B. DRAKE, *His Att'ys.*

That the order of hearing of the same was as follows:

(Title of court and estate.)

On reading and filing the petition of Wm. Newton Meeks, grantee of the heirs of said deceased, setting forth among other things that, on the 12th day of May, A. D. 1864, Joel Harlan and Lucien B. Huff were duly appointed and duly qualified, and have ever since acted, as administrators of the said estate of George Harlan, deceased, late of said county of Santa Clara.

239 That no debts or claims have been presented to them, or either of them, as such administrators, against said estate of said deceased, and that none exist.

That a portion of the real estate belonging to said estate at the time of the death of said George, to wit, one hundred-vara lot number ten

(10), situated on Mission street, in the city and county of San Francisco, State of California, has been sold and conveyed to the said petitioners; and praying that said one hundred vara lot, No. 10, be distributed to said petitioner upon his giving bonds with security for the payment of his proportion of the debts of the said estate.

It is ordered that Saturday, the sixth (6) day of November, A. D. 1869, being a day of a term of this court, to wit, of the November term, A. D. 1869, at 12 o'clock m. of said day, be and the same is hereby appointed for the hearing of said petition and application for distribution, at which time all persons interested in said estate may appear and then and there show cause, if any they have, why an order of
240 distribution of said lot No. 10 should not be made to said petitioner according to law.

And it is further ordered that the clerk of said court give notice thereof by causing notices to be posted in at least three public places in this county, at least ten days before the hearing of said petition, and that personal notice of this order, together with personal notice of the time and place of the hearing of said application, be given to said administrators, Joel Harlan and L. B. Huff, by citation, at least ten days before the said 6th day of November, A. D. 1869, requiring them, said administrators, to appear before said judge, at the probate court-room, at the court-house, in the city of San José, on said 6th day of November, A. D. 1869, at 12 o'clock m., then and there to show cause, if any they have, why said order of distribution should not be made to said petitioner, as prayed for in said petition.

Dated October 16th, A. D. 1869.

L. ARCHER,
Probate Judge.

That the notice of the hearing of said petition, and the proofs
241 of service of same, and of the citations, were as follows:

(Title of court and estate.)

Wm. Newton Meeks, grantee of the heirs of said deceased, having filed with the clerk of the probate court of the county of Santa Clara, State of California, his petition praying for an order of distribution of lot No. 10 of the one hundred vara survey of the city and county of San Francisco:

Notice is hereby given that the hearing of said petition will be had before the said probate court, at the court-house, in the city of San José, in said county, on Saturday, the 6th of November, A. D. 1869, at 11 o'clock a. m., that being a day of the regular November term, 1869, of said court, at which time and place all persons interested in said estate are notified to appear and contest the same, if they choose.

By order of the court.

JNO. B. HEWSON,
By L. F. EASTIN,
Deputy Clerk.

SAN JOSÉ, *Oct.* 18, *A. D.* 1869.

242 STATE OF CALIFORNIA,
County of Santa Clara, ss:

L. F. Eastin, of said county, being duly sworn, deposes and says that on the 18th day of October, A. D. 1869, he duly posted exact and true copies of the within notice in three of the most public places within

said county of Santa Clara, to wit: one copy at the United States post-office in the city of San José, one at the city hall in said city of San José, county of Santa Clara, and one at the court-house where said probate court of the county of Santa Clara is held.

L. F. EASTIN.

Subscribed and sworn to before me this 19th day of October, A. D. 1869.

JOHN B. HEWSON, *Clerk.*

(Title of court and estate.)

The people of the State of California, to Joel Harlan and Lucien B. Huff, administrators of said estate, greeting:

243 By order of this court you are hereby cited and required to appear before the judge of this court, at the court room thereof, at the city of San José, in the county of Santa Clara, on Saturday, the sixth (6th) day of November, 1869, at 12 o'clock, noon, of that day, then and there to show cause, if any you have, why lot No. 10, situated on Mission street, in the city and county of San Francisco, should not be distributed to William Newton Meeks, as vendee of the heirs of said George Harlan, deceased, as prayed for in the petition of said Meeks, filed herein on the 16th day of October, A. D. 1869, to which said petition reference is hereby made, and the same is also hereby made a part of this citation.

Witness the Hon. L. Archer, judge of the probate court in and for the county of Santa Clara, with the seal of said court affixed, this 16th day of October, A. D. 1869.

Attest:

[SEAL.]

JOHN B. HEWSON, *Clerk,*
By W. E. SQUIRES,
Deputy Clerk.

(Title of court and estate.)

STATE OF CALIFORNIA,
County of San Francisco, ss:

244 Wm. Newton Meeks, being duly sworn, deposes and says that he was on the day hereinafter named, and ever since has been and now is, a white male citizen of the United States, over twenty-one years of age, and competent to be a witness for either or any of the parties interested in the matter of the above-named estate.

Deponent further says that on the 22d day of October, A. D. 1869, he personally served the citation issued to the administrators of the above-named estate, and which is hereto annexed, by personally delivering to and leaving with Joel Harlan, one of said administrators, a true and correct copy of said citation, at the county of Alameda, in the State of California, on the said 22d day of October, A. D. 1869.

WILL'M NEWTON MEEKS.

Subscribed and sworn to before me this 25th day of October, A. D. 1869.

JAMES C. PENNIE,
Justice of the Peace.

(Title of the court and estate.)

Wm. Newton Meeks, being duly sworn, deposes and says, that
245 he was on the day hereinafter mentioned, and ever since has been and now is, a white male citizen of the United States, over twenty-one years of age, competent to be a witness for either or any of the parties interested in the matter of the said estate.

Deponent further says that on the 18th day of October, A. D. 1869, he personally served the citation issued to the administrators of the above-named estate, and which is hereto annexed, by personally delivering to and leaving with Lucien B. Huff, one of said administrators, a true and correct copy of said citation, at the county of Alameda, State of California, on the said 18th day of October, A. D. 1869.

WILL'M NEWTON MEEKS.

Subscribed to before me this 25th day of October, A. D. 1869.

JAMES C. PENNIE,
Justice of the Peace.

On the sixth day of November, 1869, the said court made the following decree:

(Title of the court and estate.)

William Newton Meeks (vendee of the heirs of George Harlan,
246 deceased), having on the 16th day of October, A. D. 1869, filed in this court his petition, setting forth among other matters that Joel Harlan and Lucien B. Huff were duly appointed and duly qualified as administrators of the estate of George Harlan, deceased, on the 12th day of May, A. D. 1864, and have ever since acted and are now acting as such administrators.

That no debts or claims have been presented to the said administrators, or either of them, against said estate, and that none exist.

That no personal property, or choses in action, or mixed estate, or money, ever came to the hands of said administrators, or either of them.

That the heirs of said deceased have conveyed to said petitioner, Wm. Newton Meeks, all their right, title, and interest in, of, and to the following described real estate belonging to the estate of said deceased George Harlan, to wit, all that certain tract or lot of land lying and being situate in the city and county of San Francisco, State of California, more particularly described as follows, to wit, one hundred vara lot No. 10 (ten), situated on the south side of Mission street, between Sec-
247 ond and Third streets, reference being had to the official map of said city and county for a more particular description.

And this court having on the day aforesaid made an order directing all persons interested in said estate to be and appear before this court at the court-room in San José on the 6th day of November, A. D. 1869, at 12 o'clock m., then and there to show cause why an order of distribution, distributing said lot No. 10 to said petitioner, should not be made, and directing the clerk of said court to give notice thereof by causing notices to be posted in at least three public places in said county of Santa Clara, and that personal notice thereof be given to said administrators by citation on them to appear on this day and show cause why said lot No. 10 should not be distributed to said Meeks, as prayed for in his said petition.

And now, on this day, said Meeks appearing by counsel, and proof

being made to the satisfaction of this court that notice of said application for distribution had been posted in three public places in the county of Santa Clara, to wit, one at the court-house door in
248 said county, one at the United State post-office in the city of San José, and one at the city hall in said city of San José, as appears by the affidavit of L. F. Eastin, on file herein more than ten days prior to this day, to wit, on the 18th day of October, A. D. 1869, and proof being also made by the citation on file, tested on the 16th day of October, A. D. 1869, and the affidavits thereto attached, filed this day, that personal service of the said citation and notice of the hearing of said application was made upon each of said administrators more than ten days ago, by delivering to each of said administrators a certified copy thereof, and no one appearing in opposition thereto;

And it appearing to the court by the proofs introduced by the said petitioner that he has succeeded by conveyances from the heirs at law of said deceased to the estate in said lot No. 10, which descended to said heirs at law upon the death of said George Harlan, deceased, and to the estate which said heirs have at any time since acquired, and said Meeks, with sureties approved by the court, having executed and filed in
249 this court a bond to the said administrators in the penal sum of one thousand dollars ($1,000), conditioned that the said Meeks will, on demand, pay to said administrators the just and full amount of his share of the debts and liabilities of said estate, and the expenses of administration:

It is hereby ordered, adjudged, and decreed that there hereby is distributed to the said Wm. Newton Meeks said lot No. 10 (ten), and he is hereby adjudged and decreed to be the owner thereof in fee simple absolute as against the said administrators and their successors, and the heirs at law of said deceased, and entitled to the possession thereof.

Nov. 6th, 1869.

L. ARCHER,
Probate Judge.

The bond above mentioned for $1,000 with W. H. Patterson and E. B. Drake as sureties was filed and approved Nov. 6th, 1869.

CONCLUSIONS OF LAW.

1. That whether the sale by Aspinwall, acting as administrator,
250 as in the findings stated, be void or valid, the action is barred under section 190 of the probate act.

2. That defendants are entitled to judgment.

Let judgment be entered for the defendants with costs.

November 30, 1874.

(Signed) LORENZO SAWYER,
Circuit Judge.

(Endorsed:) Filed 30 November, 1874. L. S. B. Sawyer, clerk.

251 *Judgment.*

(On the margin:)

Full satisfaction of judgment is hereby entered by direction of the attorneys for the def'ts herein.

March 3, 1875.

L. S. B. SAWYER, *Clerk*,
By J. F. O'BEIRNE, *Dep.*

In the circuit court of the United States of the ninth judicial circuit in and for the district of California.

WILLIAM NEWTON MEEKS
vs.
FERDINAND VASSAULT ET AL. } At law. No. 1083.

This cause having come on regularly for trial on the 1st day of October, A. D. 1873, being a day in the June, A. D. 1873, term of said court, before the court sitting without a jury, a trial by jury having been expressly waived by written stipulation of counsel for the respective parties, W. H. Patterson, esq., appearing on behalf of plaintiff, and Campbell, Fox & Campbell, and S. M. Wilson, esqs., on behalf of defendants, and the trial having been proceeded with on the 6th, 7th, 8th, & 9th days of said October, and upon the 23d & 24th days of December, of said year, and witnesses on behalf of the plaintiff and of the defendants having been sworn and examined, and the evidence being closed, the cause, after arguments of counsel, having been submitted to the court for consideration and decision, and the court,
252 after due deliberation, having filed its finding in writing and ordered that judgment be entered herein in accordance therewith:

Now, therefore, by virtue of the law and the finding aforesaid, it is considered by the court that the plaintiff take nothing by this action, that the defendants go hereof without day, and that the said defendants do have and recover of and from William N. Meeks, said plaintiff, their costs in this behalf expended, taxed at .

Judgment entered the 30th day of November, A. D. 1874.

L. S. B. SAWYER, *Clerk.*

A true copy of an original entered in the therein entitled cause in judgment register C. L. No. 2, p. 72.

Attest, &c.:

[SEAL.] L. S. B. SAWYER, *Clerk.*

(Endorsed:) Filed 30 November, 1874. L. S. B. Sawyer, clerk.

253 *Certificate to judgment roll.*

United States circuit court, ninth judicial circuit, district of California.

WM. NEWTON MEEKS
v.
FERDINAND VASSAULT ET AL. }

I, Lorenzo S. B. Sawyer, clerk of the circuit court of the United States, of the ninth judicial circuit, in and for the district of California, do hereby certify that the foregoing and hereunto annexed papers constitute the judgment roll in the action therein entitled.

Witness my hand and the seal of said circuit court this 30th day of November, A. D. 1874.

[SEAL.]

L. S. B. SAWYER, *Clerk,*
By J. F. O'BEIRNE, *Dep. Clk.*

(Endorsed:) Judgment-roll. Filed 30 Nov'r, 1874. L. S. B. Sawyer, clerk, by J. F. O'Beirne, dep. cl'k.

254 *Deposition of Abner Phelps.*

United States circuit court dist. of California.

WM. N. MEEKS
v.
FERDINAND VASSAULT & AL.

Deposition of Abner Phelps taken before me, Jos. F. O'Beirne, a commissioner of said circuit court, on Saturday, October 4th, A. D. 1873, at 11.30 o'clock a. m.

Witness duly sworn.

Present at the taking of said deposition W. H. Patterson, esq., for plaintiff, and Alex. Campbell, sen'r, for def'ts.

Deposition of Abner Phelps on behalf of plaintiff, who being duly sworn, deposes and says:

My name is Abner Phelps; I reside in the city and county of San Francisco, and have for twenty years and upwards, last past; I know the plaintiff; I have known 100 vara lot No. 10 in the city and county of San Francisco since 1852 and 1853, since probably May, 1849, as far back as May, 1849.

Mr. Patterson:

Q. What, if anything, do you know of Mr. Meeks using or occupying or exercising any control over that lot in early times?

A. I was aware that Mr. Meeks claimed that property, but I
255 did not know much about the occupation until Mr. Meeks left here. In May, 1854, I became his agent by power of attorney and collected the rents and paid out moneys for street improvements and managed his business in relation to that lot for over a year.

Q. Were the rents which you collected payable according to the terms of written leases?

A. Yes, sir; all written leases, I think.

Q. Were those written leases made by you or by himself?

A. Mostly by himself. There may have been one or two made by me. I don't think there was more. There was a list to collect from, an account where those names were kept. There was a paying list that I collected from; but I don't remember the names of those parties, not having thought of them since. That list was in my hands all the time to collect by—that is the list. I would recognize those names because some of them are in my writing.

Q. This is supposed to be the list you were just speaking of (showing a paper). Do you want your specs to see if it is or not?

256 (Witness puts on his glasses and looks at the paper.)

A. Yes, sir; this is the list with the amounts of the monthly rents due. I recognize all those names in the first part there.

Mr. PATTERSON. Mr. Campbell, put your initials across there to recognize it. (Mr. Campbell does so.)

Q. In 1854 and 1855, were you dealing in real estate, and did you have occasion to know, and did you know, the value of real estate in San Francisco?

A. I have owned a good deal of property about that time and have since, and dealt considerable in it; but is some time ago. Well, we talked about the value of that property as being prospectively as some of the best property in the city; and also those improvements.

Q. What in your judgment and estimation was the value of this property in 1854 and 1855?

A. Why, I should have liked to own that property at $50,000, very much indeed.

Q. You think it would have sold for that?

A. I think so; yes. At that time there was improvements; I was paying for improvements, planking Mission street and other
257 streets, and it looked like business then a good deal.

Q. Do you recollect of paying, as the agent of Mr. Meeks, any sum of money for assessments on the lot, for side-walking or grading the streets, or both?

A. I paid, I cannot state the exact amount; it was $3,000 or $4,000.

Q. You borrowed the money on mortgage?

A. Yes, sir.

Q. You gave a mortgage in the name of Mr. Meeks on some other property?

A. Yes, sir. There was other improvements for grading Mill (?) street, some $600 or $700. I think that was about all. There may have been some other small payments; I do not remember.

Q. I assume that the premises were improved by habitable houses; if that was so, do you know who built those houses or caused them to be built?

A. I do not know personally who built the houses.

Q. Who claimed them while you were in charge?

A. Mr. Meeks claimed them and received rents for them, and
258 no man ever objected to paying the rent. I had no difficulty in collecting rents.

Cross-examination. Mr. Campbell, sr.:

Q. Mr. Phelps, up to what time did you continue to collect the rents?

A. Some time in 1855, in June, I think.

Q. Were any improvements put upon that lot during the time you were collecting the rents?

A. I do not recollect about that. There was no improvements except what I mentioned on the streets.

Q. What I mean by improvements is houses on the lot itself.

A. I do not know of any.

Q. Do you know that Mr. Meeks put any improvements on the lot itself in the shape of houses or buildings?

A. Personally I do not remember. There were no improvements, very little. Whether he did or not I cannot say.

Q. After you ceased to collect the rents, did you have anything to do with the lot?

A. No, sir.

Q. When you speak of the lot being worth $50,000, do you
259 mean with a good title and possession accompanying it?

A. Of course I meant a good title. I don't suppose a man would buy without.

Q. A good title and possession accompanying the title?

A. Yes, sir. I take that to be a part of the sale.

Q. What difference in the value of the lot would it make, in your opinion, if one person was in possession claiming it, and another person was selling what he alleged to be the true title?

A. Well, I give that opinion, considering it to be a good title at that time. Mr. Meek's title was not questioned that I know of. That was y idea.

Q. Do you mean that at that time, in 1854 or 1855, do you mean to say that in your opinion, in 1854 or 1855, $50,000 in cash could have been obtained for that lot at any sale that could have been made?

A. Well, I think it might have been sold for that.

Q. What streets was that lot bounded by, Mr. Phelps, at that time? What were they known as?

260 A. Mission. I don't know as I could tell you the boundaries, the way it is cut up now.

Q. At that time?

A. Nor at that time. I have not looked at it lately. I was over the lot every day then, but since they have been cutting and changing the streets so much I don't often give any opinion about any place. I have not thought of it for years, nor paid any attention to the lot.

Q. You have spoken of Mr. Meeks having a good title. Was that under a Colton grant?

A. No, sir. I don't pretend to determine his title by any means.

Q. You don't know what title he claims under?

A. I have heard of it, but I don't know the original title.

Q. Do you know the character of title he claimed under then?

A. I have heard something of what it was.

It is stipulated by counsel that they will take the reporter's transcript of this deposition without the signature of Mr. Phelps.

261 Sworn to before me October 4th, A. D. 1873.

JOS. F. O'BEIRNE,
U. S. Comm'r, Cal.

UNITED STATES OF AMERICA,
District of California, ss:

I, Joseph F. O'Beirne, a commissioner of the circuit court of the United States for the district of California, in the ninth judicial circuit, do hereby certify that the witness in the foregoing deposition named was by me duly sworn to testify the truth, the whole truth, and nothing but the truth; that said deposition was taken at the residence of said Abner Phelps, in the city and county of San Francisco, said district, on the 4th day of October, A. D. 1873, between the hours of 12 m. and 1 p. m. of said day; and that said deposition was taken in my presence and in the presence of the witness, at the consent of parties, by a phonographic reporter, and by him reduced to writing.

Witness my hand this 6th day of October, A. D. 1873.

JOS. F. O'BEIRNE,
U. S. Comm'r, Cal.

(Endorsed:) Filed 6 Oct., 1873. L. S. B. Sawyer, clerk, by J. F. O'Beirne, dep. cl'ck.

262 *Bond on writ of error.*

In the Supreme Court of the United States.

WILLIAM NEWTON MEEKS
vs.
FERDINAND VASSAULT & AL.

Know all men by these presents, that we, Nathaniel W. Chittenden, of the city and county of San Francisco, State of California, and Robert

Simson, of Brooklyn Township, Alameda County, State of California, are held and firmly bound unto Robert Olpherts, Michael Costello, J. J. Hucks, William P. Gheen, Edward C. Kirby, Michael Hogan, John Duffey, James Fanning, E. G. Denniston, John Morrison, Mary Hogan, T. W. Goddard, Adam Laux, August Gast, William Robinson, Maria Murray, William Taylor, Anthony McQuade, Catherine McQuade, Henry Schoenan, Charles Brown, Frank Lawlor, Thomas Kain, Neal Bool, Margaret Dunn, William Craine, Henry Chester, J. B. Morrison, Elizabeth McGee, Henry McLaughlin, Bridget B. Mitchell, Patrick Mitchell, James Patterson, Robert Thiele, Otto Jursh, John C. Parks, Mary Devlin, John Hurley, Frank Lawlor, M. P. Howe, Thomas
263 O'Brien, Henry T. Cook, The Montgomery Street Real Estate Company, and Maurice Dore, in the sum of five hundred dollars lawful money of the United States of America to be paid to the said Robert Olpherts, Michael Costello, J. J. Hucks, William P. Gheen, Edward C. Kirby, Michael Hogan, John Duffey, James Fanning, E. G. Denniston, John Morrison, Mary Hogan, T. W. Goddard, Adam Laux, August Gast, William Robinson, Maria Murray, William Taylor, Anthony McQuade, Catherine McQuade, Henry Schoenan, Charles Brown, Frank Lawlor, Thomas Kain, Neal Bool, Margaret Dunn, William Craine, Henry Chester, J. B. Morrison, Elizabeth McGee, Henry McLaughlin, Bridget B. Mitchell, Patrick Mitchell, James Patterson, Robert Thiel, Otto Jursh, John C. Parks, Mary Devlin, John Hurley, Frank Lawlor, M. P. Howe, Thomas O'Brien, Henry T. Cook, and Maurice Dore, their and each of their heirs, executors, and administrators, and to The Montgomery Street Real Estate Company, its successor or successors.

264 To which payment well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators firmly by these presents. Sealed with our seals, dated this thirty-first day of August, A. D. 1876.

Whereas the said William Newton Meeks has prosecuted a writ of error to the Supreme Court of the United States of America to reverse the judgment rendered in the action in the circuit court of the United States for the district of California, entitled "William Newton Meeks versus Ferdinand Vassault et al.":

Now, therefore, the condition of this obligation is such that if the above-named William Newton Meeks shall prosecute his said writ of error to effect and answer all costs if he shall fail to make good his plea, then this obligation shall be void, otherwise to remain in full force and virtue.

NATHANIEL W. CHITTENDEN. [SEAL.]
ROBERT SIMSON. [SEAL.]

Signed, sealed and delivered in presence of—
JOS. F. O'BEIRNE.

UNITED STATES OF AMERICA,
District of California:

265 Nathaniel W. Chittenden and Robert Simson, being duly sworn, each for himself deposes and says, that he is a householder in said district and is worth the sum of five hundred dollars exclusive of property exempt from execution and over and above all debts and liabilities.

NATHANIEL W. CHITTENDEN.
ROBERT SIMSON.

Subscribed and sworn to before me this 31st day of August, A. D. 1876.

JOS. F. O'BEIRNE,
Comm'r U. S. Circuit Court, Dist. of Cal'a.

(Endorsed:)
I approve the form of the within bond & and the sufficiency of the sureties thereon.
Aug. 31st, 1876.
(Signed) LORENZO SAWYER,
Circuit Judge.

Filed August 31st, 1876.

L. S. B. SAWYER, *Clerk*,
By J. F. O'BEIRNE, *Dep. Clk.*

266 UNITED STATES OF AMERICA,
District of California:

I, L. S. B. Sawyer, clerk of the circuit court of the United States of the ninth judicial circuit, in and for the district of California, do hereby certify that the foregoing two hundred and sixty-five written pages, numbered from 1 to 265, both inclusive, contain a true copy of the record and of all the proceedings in the therein entitled action, and that the same together constitute the return to the annexed writ of error.

1. Answer of R. Olpherts and others.
2. Do. do. J. J. Hucks " W. P. Gheen.
3. Do. do. E. C. Kirby " others.
4. Do. do. Wm. Robinson " "
5. Do. do. A. McQuade and Cathe. McQuade.
6. Do. do. Henry Schoenan and Chas. Brown.
7. Do. do. Frank Lawlor and others.
8. Do. do. Wm. Craine " "
9. Do. do. Bridget B. Mitchell and P. Mitchell.
10. Do. do. James Patterson and others.
11. Do. do. M. P. Howe " "
12. Do. do. The Montgomery Street Real Estate Co.
13. Do. do. Maurice Doré.

267 14. Bond on writ of error.
15. Certificate to judgment roll.
16. Complaint.
17. Deposition of Abner Phelps.
18. Findings.
19. Judgment.
20. Summons.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at San Francisco, this 3rd day of October, A. D. 1876.
[SEAL.] L. S. B. SAWYER, *Clerk.*

(Indorsement on cover:) No. 293. William Newton Meeks, plaintiff in error, vs. Robert Olpherts, Michael Costello, J. J. Hucks, W. P. Gheen, et al. California C. C. U. S. Filed 26th October, 1876.

C

Supreme Court of the United States.

OCTOBER TERM, 1879.

No 70.

WILLIAM NEWTON MEEKS, PLAINTIFF IN ERROR,

vs.

ROBERT OLPHERTS, MICHAEL COSTELLO, AND OTHERS.

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF CALIFORNIA.

BRIEF OF MONTGOMERY BLAIR, OF COUNSEL FOR PLAINTIFF IN ERROR.

Judd & Detweiler, Printers.

Supreme Court of the United States.

OCTOBER TERM, 1879.

No. 70.

WILLIAM NEWTON MEEKS, PLAINTIFF IN ERROR,

vs.

ROBERT OLPHERTS, MICHAEL COSTELLO, AND OTHERS.

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF CALIFORNIA.

BRIEF OF MONTGOMERY BLAIR, OF COUNSEL FOR PLAINTIFF IN ERROR.

STATEMENT.

This is an action of ejectment, brought on the 30th of September, 1872, to recover one hundred vara, lot No. 10, in the city of San Francisco, State of California.

Thirteen separate answers were filed, (pp. 6, 11, 17, 22, 27, 33, 37, 43, 48, 53, 59, 60, 64.) In eleven of these the parties deny all the allegations of the complaint, and claim to own specific parts of the lot by deeds from Benjamin Aspinwall, administrator of George Harlan, deceased, made 13th February, 1856, and by continuous adverse possession under said deeds from that date until this suit was brought, being more than fifteen years.

These parties also plead *in estoppel* the judgments in two

previous actions in the State courts, involving the title to said lot between them and their privies and the plaintiff, in which the judgments were against the plaintiff.

The two other separate answers, in addition to these defenses, allege (pp. 62, 66) that the plaintiff claims under the heirs of said George Harlan, denying the validity of the sale and conveyance under which defendants hold from the administrator of said Harlan; and these defendants say the plaintiff is precluded from doing this by section 190 of the act of the Legislature of California, entitled "An act to regulate the settlement of the estate of deceased persons," approved May 1, 1851, which bars any such action unless commenced within three years after such sale, except in case of minors or others under legal disabilities to sue, and that they must sue within three years after the removal of their disabilities; and the defendants further allege that this action was not commenced within three years next after said sale to them, and that neither plaintiff, nor any person under whom he claims, was a minor, or under any legal disability to sue, when the cause of action accrued, or at any time within the three years next before the commencement of this action. And the defendants aver, also, in said answers, that the action is barred by section 1573 of the "Code of Civil Procedure" of said State.

At the trial a jury was waived, and the court (pp. 69–80) found that the lot was within the confirmation to the city of San Francisco, which was not yet finally surveyed, and within the limits to which the Van Ness ordinance, and the act of the Legislature ratifying it, and the act of Congress of July 1, 1864, entitled "An act to expedite the final settlement of title to lands in the State of California," (13 Stat., 33; sect. 3,) apply, and is not reserved; that defendants, at the commencement of this suit, were in the actual and open possession of the parts of the lot claimed by them; that they, or those in privity with them, had been in such possession, claiming adversely to the plaintiff under

said conveyance from Harlan's administrator to them, made on 13th of July, 1856, from the date thereof. That George Hyde, then alcalde, had granted the lot sued for, on the 14th of January, 1849, to J. G. D. Dunleavy, and had then put him in possession of it; that Dunleavy had afterwards conveyed it to said Harlan, who died seized of it; that Harlan died intestate on the 8th of May, 1850, at his residence in the county of Santa Clara, leaving a widow, Catharine, and six children, viz: Joel, Elisha, George, Mary (then and now wife of Henry C. Smith), Nancy (then and now wife of Lucien R. Huff), and Sarah (since married to James H. Farley), and two grandchildren, Jerome and George Van Gorden, sons of a deceased daughter; that Joel, Elisha and Catharine were of age prior to Harlan's death, George not until within three years next before this action, Jerome on or prior to 8th of July, '69, and George Van Gorden July, '66.

That the plaintiff held the title of all the heirs to the lot in question at the commencement of this action.

That Henry C. Smith took letters of administration on Harlan's estate on 19th of August, 1850, out of the probate court of Santa Clara county, and as administrator received personal property and money sufficient to pay all of Harlan's debts, but failed to do so; on 23d of December, 1853, tendered his resignation, and was directed by the probate court to turn over the assets in his hands, and account with the public administrator, who was put in charge of the estate on or before the next term of court; that he failed to do this and was not discharged when on the 18th of May, 1855, the court made Benjamin Aspinwall administrator, who petitioned for and obtained, on November 10th, 1855, an order to sell said lot and two 50-vara lots in San Francisco to pay a debt of $5,000 due him, and in pursuance of said order sold and conveyed said 100-vara lot as stated in the answers of defendants, his proceedings in relation thereto being the same referred to in the cases of Meeks *v.* Hahn, 20 Cal., 620; 10

Ib., 119, and Haynes *v.* Meeks, 20 Ib., 288. That Aspinwall continued to be administrator till 12th May, 1864, when he was succeeded by Joel Harlan and Lucien B. Huff, who still remained in charge of the estate at the commencement of this suit, and that on 20th October, 1869, plaintiff filed a petition in said probate court, asking to have said 100-vara lot distributed to him as the purchaser from the heirs-at-law, which was done. On these findings the court decided (p. 80) the law to be, that whether the sale by Aspinwall, acting administrator, be void or valid, the action is barred by section 190 of the probate act, and defendants were, therefore, entitled to judgment, and gave judgment accordingly.

Assignment of Error.

This decision of the court is assigned for error.

Argument.

The case depends upon the construction which the court shall give to sections 190 and 191 of the probate act of California, which are as follows: "Sect. 190. No action for the recovery of any real estate sold by an executor or administrator under the provisions of this chapter shall be maintained by any heir or other person claiming under the deceased, testator or intestate, unless it be commenced within three years next after the sale. Sect. 191. The preceding section shall not apply to minors or others under any legal disability to sue at the time when the right of action shall first accrue; but all such persons may commence such actions at any time within three years after the removal of the disability."

It was decided in the Supreme Court of California, in the case of Chapman *v.* Hollister, that "on the death of the ancestor his title to real estate passes to the heir or devisee, subject, however, to the right of possession of the executor

or administrator for the payment of debts, (Probate Act, secs. 114, 194; Becket *v.* Selover, 7 Cal., 215; Meeks *v.* Hahn, 20 Cal., 627; Estate of Woodworth, 31 Cal., 604,) and when there is no administration upon the estate the heir or devisee may maintain ejectment for the real estate of the testator or intestate. (Undergaff *v.* Trask, 18 Cal., 458.) But if the probate court has regularly granted letters testamentary or of administration, and has acquired jurisdiction over the administration of the estate, and if a temporary vacancy occurs in the office of executor or administrator, and whilst it is yet unclosed, the heir or devisee can not maintain ejectment during the vacancy."

It being, therefore, the settled law of California that the probate act of that State disabled the heirs of Harlan, and plaintiff claiming under them, from suing for the property in question at any time between the 19th day of August, 1850, when letters of administration were issued to Henry C. Smith, and the 6th day of November, 1869, when the probate court released its jurisdiction over the property in question and ordered it to be distributed to the plaintiff as the vendee of the heirs; and three years not having elapsed between the last date and the 30th of September, 1872, when this suit was brought, it follows that the circuit court, in its decision in this case, holds that the plaintiff in error was barred by the 190th section of said probate act, notwithstanding the disability to sue imposed on him by the 114th and 194th and 195th sections of said act during the whole of the time pleaded against him.

1. This construction of the act makes it an act of confiscation, for, whilst by the 114th and 194th sections it prevented the plaintiff in error from suing during the whole of the time pleaded against him, it is held that the 190th section forever thereafter divested him of the right to sue because he did not sue within that time. The 190th and 191st sections of this act are provisions of law by which a right of

action is destroyed by the possessors permitting the time specified to elapse without his exercising a right which it necessarily assumes, he is then capable of exercising. It is the operation of time on the right which destroys it. But on the construction given to the law by the circuit court it makes time operate to destroy a right which did not exist while it was passing, and which could not have been asserted. This is plainly contrary to reason and to the well settled rule of construction of such acts. "The law," says Chief Justice Marshall, in Ogden *vs.* Saunders, (12 Wheat., 337,) "cannot impair what does not exist. It cannot act on nonentities."

Hence, disseizin does affect the right of a person not having the right of entry. (7 East., 319; Coke Litt., 240 b; Sug. Law of Vendors, 239–40; 1 Burr, 60; 2 Salk., 422; 1 Lutw, 779; 4 John, 398–9.)

In that case Chancellor Kent said: "Neither a descent cast *nor the statute of limitations will affect a right, if a particular estate* existed at the time of the disseizin, or when the adverse possession began, because a right of entry in the remainder-man cannot exist during the existence of the *particular estate*, and the *laches* of a tenant for life will not affect the party entitled."

To the same effect are the cases of Jackson *vs.* Sellick, 8 John., 268–9, and Lessee of Hall *vs.* Vandergrift, 3 Binney, 374, 384–5; and the reason, as given us by Chief Justice Savage, in Jackson *vs.* Johnson, 5 Cowen, 102–3, why the statute does not run against the reversioner or remainder-man during the continuance of the *particular estate*, is that "the right of entry never existed in him." This is plainly as applicable to the heir-at-law during the continuance of the *particular estate*, vested in the administrator by the California probate act, as to an ordinary reversioner or remainder-man. It is but stating the self-evident truth that time could not destroy what did not exist, whilst it was passing, and the law will not be held to enact the impossible.

This court has asserted this doctrine in several cases not nearly so strong as this. Thus, in the case of Montgomery *vs.* Hernandez, 12 Wheat., 129, the decision of the State court was affirmed (7 Martin's La., 214), in which it was held that the lapse of the statutory time did not bar a suit on a bond when the right of the party to sue was suspended by a pending appeal involving the right of the party to sue. "Potheir," says the Supreme Court of Louisiana, "states that prescription only begins to run from the time when the creditor has the right to institute his demand, because no delay can be imputed to him before that time: hence the maxim *Contra non valentem Agere non currit prescriptio.* The Supreme Court declares it to be a general rule that a want of parties, plaintiff or defendant, whereby a temporary suspension of the legal remedy is created, takes the case out of the statute of limitations. Indeed, the idea of a man losing his right by not bringing an action, *which it was impossible he could bring*, involves such a contradiction in itself, and leads to such monstrous injustice, that nothing short of the most positive law could authorize any tribunal to sanction such a doctrine. (*Potheir*, Traite des Obligations, 645; *Ibid*, Traite de Prescriptions, Nos. 22, 23; 8 Cranch, 84, 91; 12 Martin, 76.)

In Richards *v.* Maryland I. Co., 8 Cranch., 92, the court said: "The cases which, though literally within the words of the statute [of limitations] have been held to be without its spirit, are those only in which circumstances intervened which rendered it impossible or inconsistent with known and established principles that a cause of action would be revived by the renewal of the contract or enforced by a suit at law within the time prescribed. The object of the law is to secure the individual from the machinations of dishonesty, when attempted under the advantages attendant upon lapse of time, loss of papers, and death of witnesses.

But when causes present themselves in which no *laches* can be imputed to the plaintiffs, but great injustice would

be done by applying to such cases the effect of the statute, the conclusion of reason, and of the law, is that such cases were not in the mind of the legislature when enacting that law. Such cases are the want of parties plaintiff or defendant, whereby a temporary suspension of legal remedy takes place."

3. And this construction of the 190th section is required by the succeeding section. The 191st section provides that "the preceding section shall not apply to minors or others under any legal disability to sue *at the time when the right of action shall first accrue;* but all such persons may commence such actions at any time within three years after the removal of the disability."

It was held by the circuit court that the saving of this section applied only to persons under personal disabilities, that is, to those who were under the guardianship of others. Being under guardianship by reason of their incapacity to take care of their own affairs, the law does not hold them responsible for the failure of their guardians to exercise the right which this section expressly says shall be accorded to them, until their disabilities have been removed and they had become capable of managing their own affairs, thereby themselves being guilty of negligence and properly responsible for the negligence in the assertion of their right. Having become responsible persons and upon the same footing with others, they are given the term of three years within which to exercise the right of action which had accrued to them whilst they were irresponsible, before it would be barred.

Now, as the only object of this section was to put such persons upon the same footing with others, and as by the language of the section the provision that "the right of action shall first accrue to them" precedes and is an express condition of the requirement which follows, that such persons "shall commence such actions within three years after

the removal of the disability," it is manifest that the same provision and condition is implied in the preceding section, for it was clearly not intended to bar one class of persons before the right of action had accrued to them, whilst expressly providing in regard to others that the right of action shall first accrue to them before the statute shall run against them.

4. The judgment of the court assumes, what the 190th section taken by itself would seem to warrant, viz., that the right of action accrued to the heirs-at-law on the day of sale, because it declares no action shall be maintained by them unless it be commenced within three years next after the sale, and this was the construction of the plaintiff when he brought his action originally. But this was not the true construction of the section, and the plaintiff's action was defeated on the express ground that no right of action accrued to the heirs on the day of sale, and that it was not until administration was closed or distribution was had that any such right of action existed.

Now, as the 190th section, taken in connection with the 191st, contemplates the existence of such right of action, and gives three years after it accrues to commence it, as clearly as it fixes the date of sale as the date of its accrual; and as the Supreme Court of California holds that such right of action does not accrue on the date of sale, but subsequently thereto, it is necessary, in order to give the statute its true extent and meaning, to adopt the date fixed by the Supreme Court of California as the date from which the three years commence to run against the right of action; otherwise, the three years intended to be given by the statute would not be given, and the right of action recognized by this statute would be abrogated. If the 190th section stood alone it might be said that it did not give three years for commencing the action *after the right of action accrued, but only three years after the date of the sale.* But the

following section, which expressly gives three years after the removal of disabilities, when the right of action accrued to persons under disabilities, puts it beyond controversy that three years were intended to be given by the 190th section also, and that it was only because it was assumed in that section that the date of sale and of the right of action were identical, that the date of sale was made, by that section, the date from which the limitation runs. But as the Supreme Court of California has decided that the date of sale is not the date at which the right of action accrues, and that the 190th section conflicts on this point with other clauses of the statute, and must yield to them, it follows that it must yield also as respects the date from which limitation runs, in order that the true intent and meaning of the statute may be carried out.

5. The rule upon which the court below limits the saving in the 191st section to those under personal diabilities, viz: "that where particular words are followed by general ones the latter are held as applying to persons and things of the same kind as those which precede." Maxwell, p. 298, qualifies, by adding "unless, of course, there be something to show that a wider sense was intended." This is, in effect, the qualification stated in 20 Wend, 561–2, where the rule is stated to be "that statutes are to be read according to the most natural and obvious import of the language, without resorting to subtle or forced construction for the purpose of either limiting or extending their operation;" which means that all special rules for construing particular words are subordinate to the general one of giving them their true meaning in view of all the circumstances. In this case the general words, "or others under any legal disability to sue," are preceded by the word "minors," and the circuit court held them to apply only to *personal* disabilities, and to include only minors, *femmes coverts*, *convicts and persons non compos*. Besides that, it is usual to follow the word

"minors" with the words "femmes coverts," &c., when this restriction is intended, as was done in the act of 1850, (p. 346 of the acts of 1850,) which was drawn by the author of the Probate act, and was adopted by the legislature on the same day, the general words here used in their natural and obvious sense, plainly import in themselves a wider signification than that given to them by the court. This wider sense is also required by other parts of the act.

The effect of the construction given to these words by the court is to substitute the word "personal" for the word "legal" before the word "disabilities," and to leave without effect the words "to sue," which follow, for the court holds that the effect is the same as if the words were "and others under personal disability," instead of being "and others under *any legal* disability *to sue*." Such substitution and suppression of language would be inadmissible in any case. It cannot be supposed that the law-makers selected the words "any *legal* disability to sue" instead of the words "personal disability," which import so much more without intending a wider application. And a construction which leaves words without effect is always rejected. (Maxwell, p. 15.) And when it appears by other clauses of the act that certain persons who are recognized as having title are put temporarily under "*a legal* disability to sue," the words which the court's construction strikes out are shown to have been properly chosen to give harmony to the act and conform it to the ends of justice.

And it is necessary to give the saving the wider meaning which the words import to make it consistent with justice. This is the paramount rule of construction. "Whenever," says Maxwell, 179, "the language admits of two constructions, according to one of which the enactment would be unjust, absurd, or mischievous, and according to the other it would be reasonable and wholesome, it is obvious that the latter must be adopted," citing Lord Campbell in R. *v.* Skeen, 28 L. J. Mc., 98, and other authorities. "Thus, when a by-law authorized the Poulterers' Co. to fine 'all

poulterers in London, or within seven miles round, who refused to be admitted to their company,' it was held that, inasmuch as no poulterer could legally belong to the company who was not also a freeman of the city, the by-law was to be construed as limited to those poulterers who were also freemen, to avoid the injustice of punishing men for refusing to enter a company to which they could not legally belong." (Poulterers' Co. *vs.* Phillips, 6 Bing., N. C., 314.)

"So in sections 112 and 198 of the bankrupt act of 1849, which protected a bankrupt from arrest by his 'creditors,' this word was construed as limited to those creditors who had debts provable under the bankruptcy, for it would have been obviously unjust and was, therefore, presumably not intended that the certificate shall protect a bankrupt not only against creditors who had or might have proved under the bankruptcy, but against creditors whose claims were not barred." (Grace *vs.* Bishop, 11 Ex.; Phillips *vs.* Poland, L. R., 1 C. P., 204.)

The reason for excepting the plaintiff in error from the operation of the language applied to him by the circuit court is identical with that adopted by the court in both of these cases. Like the parties excused in those cases, he was guilty of *no laches.* He was just as incapable of bringing his action within the time prescribed by the 190th section as the poulterer was of becoming a member of the company, and the incapacity in both cases was an incapacity imposed by the law. And the case of the creditor who was not barred by the bankrupt act because he could not prove his demand, is simply the case of a plaintiff who could not sue—a case not distinguished in principle from the case of the plaintiff in error. But, besides this reason, which these cases adjudge to be a sufficient reason for not construing the 190th section to apply to him, there is the additional reason that the section which follows contains words of express exception which, construed in their obvious import, make the previous section consistent with justice.

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